

16C C.J.S. Constitutional Law VIII XX Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

[Topic Summary](#) | [Correlation Table](#)

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A.L.R. Index, Fifth Amendment

A.L.R. Index, Fourteenth Amendment

West's A.L.R. Digest, [Constitutional Law](#)  [2648](#), [3865](#), [3867](#), [3869](#), [3872](#) to [3874](#), [3877](#), [3879](#), [3893](#), [3901](#), [3902](#), [3907](#), [3911](#), [3912](#), [3924](#), [3952](#), [4040](#), [4070](#) to [4074](#), [4080](#), [4084](#), [4085](#), [4088](#), [4092](#), [4093](#), [4101](#), [4102](#), [4104](#), [4105\(1\)](#), [4106](#) to [4110](#), [4112](#), [4115](#), [4117](#) to [4120](#), [4123](#) to [4127](#), [4129](#), [4130](#), [4156](#), [4165](#), [4186](#), [4187](#), [4205](#), [4207](#), [4208](#), [4224](#), [4226](#), [4255](#), [4256](#), [4262](#), [4272](#), [4273\(1\)](#), [4285](#), [4286](#), [4289](#), [4292](#), [4301](#), [4303](#), [4304](#), [4326](#), [4350](#), [4355](#), [4356](#), [4365](#), [4369](#) to [4373](#), [4416](#), [4428](#), [4429](#), [4475](#), [4822](#), [4829](#)

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

A. Due Process; Deprivations and Recourse, in General

[Topic Summary](#) | [Correlation Table](#)

Research References

A.L.R. Library

A.L.R. Index, Constitutional Law

A.L.R. Index, Due Process

A.L.R. Index, Fifth Amendment

A.L.R. Index, Fourteenth Amendment

West's A.L.R. Digest, [Constitutional Law](#) 🔑 [3867](#), [3872](#) to [3874](#), [3879](#), [3893](#), [3912](#)

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16C C.J.S. Constitutional Law § 1883

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

A. Due Process; Deprivations and Recourse, in General

§ 1883. Due process protections and deprivations, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3872 to 3874

Under the provisions of the Federal Constitution and many state constitutions, an owner cannot be deprived of life, liberty, or property without due process of law.

Under the constitutional guaranties, neither a state nor the federal government may deprive any person of life or liberty except by due process of law.¹ More particularly, such guaranties impose constraints on governmental actions or decisions which deprive persons of interests comprehended within the meaning of liberty interests.² A liberty interest may not be interfered with, under the guise of protecting the public interest, by governmental action which is arbitrary or without reasonable relation to some object or purpose within the competency of the State to effect.³

The deprivation of property without due process of law is inhibited by the Federal Constitution⁴ and many state constitutions,⁵ and the general rule is that property rights shall be free of arbitrary government interference.⁶ Thus, a person cannot be deprived of his or her property or the use thereof without due process of law.⁷ However, a state is free to change or even to terminate a property interest it has granted as long as the state follows the requirements of due process.⁸

Neither the executive nor legislative departments nor the courts may violate the due process guaranty or authorize it to be done.⁹ Thus, a taking of property without authority of law is no less lacking in due process when it is done by the judicial department of the government rather than by some other department thereof.¹⁰

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Footnotes

- 1 U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
As to general nature and scope of due process guaranties in general, see §§ 1863 to 1882.
Heightened protection
The Due Process Clause grants heightened protection against government interference with certain fundamental rights and liberty interests.
Ill.—*Wickham v. Byrne*, 199 Ill. 2d 309, 263 Ill. Dec. 799, 769 N.E.2d 1 (2002).
Potential deprivation
The potential deprivation of liberty implicates the protections of procedural due process.
Mass.—*Querubin v. Com.*, 440 Mass. 108, 795 N.E.2d 534 (2003).
- 2 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
Limited application
The constitutional guarantee of due process does not convert all common-law duties owed by government actors into constitutional torts; rather, the guarantee applies only to deliberate decisions by government officials to deprive a person of life, liberty, or property.
Colo.—*Henderson v. Gunther*, 931 P.2d 1150 (Colo. 1997).
- 3 U.S.—*Meyer v. Nebraska*, 262 U.S. 390, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A.L.R. 1446 (1923).
- 4 U.S.—*Dusenbery v. U.S.*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).
- 5 Cal.—*In re Watson*, 91 Cal. App. 3d 455, 154 Cal. Rptr. 151 (4th Dist. 1979).
Conn.—*State v. Townsend*, 167 Conn. 539, 356 A.2d 125 (1975).
Okla.—*Helfinstine v. Martin*, 1977 OK 42, 561 P.2d 951, 21 U.C.C. Rep. Serv. 670 (Okla. 1977).
- 6 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- 7 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976); *Lloyd Corp., Limited v. Tanner*, 407 U.S. 551, 92 S. Ct. 2219, 33 L. Ed. 2d 131 (1972).
As to general nature and scope of due process guaranties, see §§ 1863 to 1882.
- 8 S.D.—*Wuest v. Winner School Dist.* 59-2, 2000 SD 42, 607 N.W.2d 912, 142 Ed. Law Rep. 1040 (S.D. 2000).
- 9 Mont.—*Sorensen v. Jacobson*, 125 Mont. 148, 232 P.2d 332, 26 A.L.R.2d 1186 (1951).
N.Y.—*Williams v. White Plains Housing Authority*, 62 Misc. 2d 613, 309 N.Y.S.2d 454 (Sup. 1970), judgment aff'd, 35 A.D.2d 965, 317 N.Y.S.2d 935 (2d Dep't 1970).
- 10 U.S.—*Williamson v. Vardeman*, 674 F.2d 1211 (8th Cir. 1982).

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16C C.J.S. Constitutional Law § 1884

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

A. Due Process; Deprivations and Recourse, in General

§ 1884. Substantive and procedural due process

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3867, 3893

In essence, two individual interests are protected by the Due Process Clause: the first, substantive due process, prevents the government from interfering with rights implicit in the concept of ordered liberty, and the second, procedural due process, requires government action resulting in the deprivation of a liberty or property interest to be implemented in a fair manner.

There are two categories of due process violations relating to the deprivation of a liberty and property interests, those being (1) substantive due process and (2) procedural due process.¹ The substantive component of the Federal Due Process Clause protects those fundamental rights and liberties which are, objectively, deeply rooted in the America's history and tradition and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if they were sacrificed.² Substantive due process embraces the right of citizens to be free from arbitrary deprivations of liberty or property³ and protects individual liberty against certain government actions regardless of the fairness of the procedures used to implement them.⁴ Substantive due process forbids the government from infringing certain fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.⁵ Substantive due process does not protect individuals from all governmental actions that infringe liberty or injure property in violation of some law, rather, substantive

due process is reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend judicial notions of fairness and that are offensive to human dignity.⁶

Procedural due process, on the other hand, concerns the constitutionality of the procedures employed to deny a person's life, liberty, or property,⁷ and procedural due process rules are meant to protect persons not from deprivation but from mistaken or unjustified deprivation of life, liberty, or property.⁸ Accordingly, in a procedural due process claim, it is not the deprivation of property or liberty that is unconstitutional, it is the deprivation of property or liberty without due process of law that is unconstitutional.⁹ Procedural due process protection ensures that when government action depriving a person of life, liberty, or property survives substantive due process review, that action is implemented in a fair manner.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Although the requirements of procedural due process are fluid and fact dependent, the point of procedural due process is to require procedural fairness and to prohibit the state from conducting unfair or arbitrary proceedings. (Per White, Circuit Judge, for a majority of the court.) [U.S. Const. Amend. 14. Johnson v. Morales, 946 F.3d 911 \(6th Cir. 2020\).](#)

Once a substantive right has been created, it is the Due Process Clause which provides the procedural minimums, and not a statute or regulation. [U.S.C.A. Const.Amend. 14. Nozzi v. Housing Authority of City of Los Angeles, 806 F.3d 1178 \(9th Cir. 2015\).](#)

To succeed on a substantive due process claim, the challenged actions must demonstrate a degree of outrageousness and a magnitude of potential or actual harm that is truly conscience-shocking. [U.S. Const. Amend. 14. Lindsey v. Hyler, 918 F.3d 1109 \(10th Cir. 2019\).](#)

Substantive due process challenge involves broad-side attack on fairness of procedural bar or limitation, on ground that right foreclosed is so fundamental or important that it is protected from extinguishment. [U.S.C.A. Const.Amend. 14. In re Adoption of J.S., 2014 UT 51, 358 P.3d 1009 \(Utah 2014\).](#)

A court's task in a challenge based on substantive due process involves a definition of the protected constitutional interest, as well as identification of the conditions under which competing state interests might outweigh it. [U.S.C.A. Const.Amend. 14. Blake v. Jossart, 2016 WI 57, 370 Wis. 2d 1, 884 N.W.2d 484 \(2016\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 [Iowa—State v. Hernandez-Lopez, 639 N.W.2d 226 \(Iowa 2002\).](#)
[Md.—Superior Court v. Ricketts, 153 Md. App. 281, 836 A.2d 707 \(2003\).](#)
[S.D.—Tri County Landfill Ass'n, Inc. v. Brule County, 2002 SD 32, 641 N.W.2d 147 \(S.D. 2002\).](#)
Guarantees of more than fair process
The Due Process Clause of the Fourteenth Amendment, like its Fifth Amendment counterpart, guarantees more than fair process as it also includes a substantive component that provides heightened protection against government interference with certain fundamental rights and liberty interests.
[U.S.—Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 \(2000\).](#)

- 2 U.S.—*DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014); *Inniss v. Aderhold*, 2015 WL 300593 (N.D. Ga. 2015).
Ala.—*Crawford v. State*, 92 So. 3d 168 (Ala. Crim. App. 2011).
Ark.—*Linder v. Linder*, 348 Ark. 322, 72 S.W.3d 841 (2002).
Fla.—*Jackson v. State*, 137 So. 3d 470 (Fla. 4th DCA 2014), review granted, 147 So. 3d 523 (Fla. 2014).
Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
Mo.—*Garozzo v. Missouri Dept. of Ins., Financial Institutions & Professional Registration, Div. of Finance*, 389 S.W.3d 660 (Mo. 2013).
Esoteric concept
Substantive due process is the esoteric concept interwoven within the judicial framework to guarantee fundamental fairness and substantial justice, and its precepts protect fundamental liberty interests against infringement by the government.
Pa.—*Khan v. State Bd. of Auctioneer Examiners*, 577 Pa. 166, 842 A.2d 936 (2004).
Careful description of interest
In substantive due process cases, courts have required a "careful description" of the asserted fundamental liberty interest.
U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997).- 3 Mich.—*In re TK*, 306 Mich. App. 698, 859 N.W.2d 208 (2014).
Property interests
Wis.—*Thorp v. Town of Lebanon*, 2000 WI 60, 235 Wis. 2d 610, 612 N.W.2d 59 (2000).- 4 Idaho—*Anderson v. Spalding*, 137 Idaho 509, 50 P.3d 1004 (2002).
Ill.—*Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798, 141 Ed. Law Rep. 222 (1999).
Iowa—*In re Detention of Matlock*, 860 N.W.2d 898 (Iowa 2015).
Minn.—*State v. Bernard*, 859 N.W.2d 762 (Minn. 2015).
R.I.—*In re McKenna*, 110 A.3d 1126 (R.I. 2015).- 5 D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).
Iowa—*In re K.M.*, 653 N.W.2d 602 (Iowa 2002) (holding modified on other grounds by, *In re P.L.*, 778 N.W.2d 33 (Iowa 2010)).- 6 Iowa—*Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255 (Iowa 2001).
S.D.—*Tri County Landfill Ass'n, Inc. v. Brule County*, 2000 SD 148, 619 N.W.2d 663 (S.D. 2000).- 7 Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).- 8 Ill.—*Fischetti v. Village of Schaumburg*, 2012 IL App (1st) 111008, 359 Ill. Dec. 920, 967 N.E.2d 950 (App. Ct. 1st Dist. 2012).
Tex.—*County of Dallas v. Wiland*, 216 S.W.3d 344 (Tex. 2007).
Constitutional guarantee
The right to procedural due process is conferred not by legislative grace but by constitutional guarantee; thus, while the legislature may elect not to confer a particular property right, it may not constitutionally authorize deprivation of such an interest, once conferred, without appropriate procedural safeguards.
Ohio—*State v. Cowan*, 103 Ohio St. 3d 144, 2004-Ohio-4777, 814 N.E.2d 846 (2004).
"Taking" claim distinguished
A constitutional claim of procedural due process is manifestly different from a "taking"; the former prevents the deprivation of life, liberty, or property without due process while the latter provides protection from the government's power of eminent domain, or, in some circumstances, excessive regulation, such that when the government literally "takes" private property for public use, a property owner may allege inverse condemnation and, if successful, is entitled to just compensation.
R.I.—*Gem Plumbing & Heating Co., Inc. v. Rossi*, 867 A.2d 796 (R.I. 2005).- 9 Wis.—*Arneson v. Jezewski*, 225 Wis. 2d 371, 592 N.W.2d 606, 134 Ed. Law Rep. 336 (1999).- 10 Mass.—*Querubin v. Com.*, 440 Mass. 108, 795 N.E.2d 534 (2003).

16C C.J.S. Constitutional Law § 1885

Corpus Juris Secundum | June 2021 Update

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

A. Due Process; Deprivations and Recourse, in General

§ 1885. Notice and opportunity to be heard

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑3879

Once protectable property interests have been created, due process requires at a minimum that notice and an opportunity for a hearing be afforded a person who may be deprived of those interests.

As a matter of procedural due process, the State may not deprive a person of life, liberty, or property without notice and opportunity for a hearing¹ appropriate to the nature of the case.² The opportunity to be heard must occur at a meaningful time and in a meaningful manner.³ The constitutional requirement of a meaningful opportunity to respond before a temporary deprivation may take effect entails, at a minimum, the right to be informed not only of the nature of the charges but also the substance of the relevant supporting evidence.⁴

Furthermore, in order to comply with procedural due process, notice of an action that threatens to deprive a person of a protected liberty or property interest must be adequate,⁵ that is, reasonably calculated to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.⁶ Notice by the state of steps which will affect a protected interest in life or liberty is adequate to satisfy due process requirements when the practicalities and peculiarities of the case are reasonably met.⁷ Due process notice standards may validly take into account the expectation and likelihood that owners will make reasonable efforts to protect their property interests.⁸

The manner and form of the hearing must necessarily vary, depending on such factors as the interests involved and the nature of the subsequent proceedings.⁹ With respect to the deprivation of an individual's life, liberty, or property, a determination of the process that is constitutionally due requires a weighing of three factors: (1) the nature of the private interest that will be affected by the official action; (2) the risk of erroneous deprivation and probable value of additional safeguards; and (3) the government's interest, including the administrative and fiscal burden of providing additional procedural safeguards.¹⁰ The procedural due process requirements in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation of life or liberty may occur.¹¹ If state action deprived an individual of a protected property interest, a court must balance the interests of all parties to the matter in order to determine the level of procedural due process which is constitutionally required under the circumstances.¹² However, before a person is deprived of property by state action, the concept of due process requires neither an inflexible procedure universally applicable to every situation nor a technical concept with a fixed content unrelated to time, place, and circumstance, as instead, what process must be afforded is determined by context, dependent upon the nature of the matter or interest involved.¹³ So, in determining whether existing procedures are adequate to protect the interest at stake for purposes of due process analysis, the duration of any potentially wrongful deprivation of a property interest is an important factor in assessing the impact of official action on the private interest involved.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Objectors to university's application for conservation district use permit (CDUP) to construct observatory near sacred mountain summit were entitled to contested case hearing before Board of Land and Natural Resources (BLNR); objectors had constitutional right to exercise Native Hawaiian customs and traditions, objectors argued that project would have significant negative effects on their Native Hawaiian cultural practices, and there was risk of erroneous deprivation absent due process protections provided by contested case hearing, as well as lack of undue burden on government in affording objectors contested case hearing. Const. Art. 1, § 5; Const. Art. 12, § 7; HRS § 91–1(5). *Hou v. Board of Land and Natural Resources*, 136 Haw. 376, 363 P.3d 224 (2015).

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Footnotes

- 1 U.S.—*Morris v. Livingston*, 739 F.3d 740 (5th Cir. 2014), cert. denied, 134 S. Ct. 2734, 189 L. Ed. 2d 772 (2014).
Alaska—*Debra P. v. Laurence S.*, 309 P.3d 1258 (Alaska 2013).
Mont.—*Kenck v. State, Child Support Enforcement Div.*, 2013 MT 380, 373 Mont. 168, 315 P.3d 957 (2013).
Wash.—*Guardianship Estate of Keffeler ex rel. Pierce v. State*, 151 Wash. 2d 331, 88 P.3d 949 (2004).
Property interests
U.S.—*Dusenbery v. U.S.*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).
Protected property interest must exist to require hearing
Iowa—*State v. Love*, 589 N.W.2d 49 (Iowa 1998).
Actual notice
Notice by mail or other means as certain to insure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.
U.S.—*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).
Controlling inquiry

Whether an individual state employee is personally able to foresee a deprivation of property is of no consequence in determining whether due process procedural requirements are met; the controlling inquiry is solely whether the State is in a position to provide for predeprivation process.

U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).

Adequacy of predeprivation procedures

In determining the adequacy of a statute's predeprivation procedures, a court must consider the government's interest in imposing the temporary deprivation, the private interest of those affected by the deprivation, the risk of erroneous deprivations through the challenged procedures, and the probable value of additional or substitute procedural safeguards.

U.S.—*Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 107 S. Ct. 1740, 95 L. Ed. 2d 239 (1987).

2 Alaska—*Debra P. v. Laurence S.*, 309 P.3d 1258 (Alaska 2013).

Mont.—*Kenck v. State, Child Support Enforcement Div.*, 2013 MT 380, 373 Mont. 168, 315 P.3d 957 (2013).

N.D.—*Combs v. Lund*, 2015 ND 10, 858 N.W.2d 311 (N.D. 2015).

Pa.—*Arnold v. W.C.A.B. (Lacour Painting, Inc.)*, 110 A.3d 1063 (Pa. Commw. Ct. 2015).

Tenn.—*State v. Burgins*, 2015 WL 1569236 (Tenn. 2015).

Wyo.—*In re ARF*, 2013 WY 97, 307 P.3d 852 (Wyo. 2013).

3 Ark.—*Ingram v. City of Pine Bluff*, 355 Ark. 129, 133 S.W.3d 382 (2003).

Haw.—*Ek v. Boggs*, 102 Haw. 289, 75 P.3d 1180 (2003).

Ohio—*State v. Cowan*, 103 Ohio St. 3d 144, 2004-Ohio-4777, 814 N.E.2d 846 (2004).

4 U.S.—*Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 107 S. Ct. 1740, 95 L. Ed. 2d 239 (1987).

5 U.S.—*Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

6 U.S.—*Jones v. Flowers*, 547 U.S. 220, 126 S. Ct. 1708, 164 L. Ed. 2d 415 (2006).

Iowa—*Meyer v. Jones*, 696 N.W.2d 611 (Iowa 2005).

Miss.—*Warnick v. Natchez Community Hosp., Inc.*, 904 So. 2d 1019 (Miss. 2004).

Actual receipt of notice not required

N.Y.—*Beckman v. Greentree Securities, Inc.*, 87 N.Y.2d 566, 640 N.Y.S.2d 845, 663 N.E.2d 886 (1996).

Notice by mail

A notice by mail or other means as certain to insure actual notice is the minimum constitutional precondition to a proceeding which will adversely affect liberty interests of any party if its name and address are reasonably ascertainable.

U.S.—*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).

7 Ind.—*Tax Certificate Investments, Inc. v. Smethers*, 714 N.E.2d 131 (Ind. 1999).

8 Vt.—*Lamare v. North Country Animal League*, 170 Vt. 115, 743 A.2d 598 (1999).

9 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).

Meaningful opportunity

Pa.—*Hardee's Food Systems, Inc. v. Department of Transp. of Pennsylvania*, 495 Pa. 514, 434 A.2d 1209 (1981).

Wash.—*Foundation for the Handicapped v. Department of Social and Health Services of Washington State*, 97 Wash. 2d 691, 648 P.2d 884 (1982).

10 D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).

Ill.—*People v. Botruff*, 212 Ill. 2d 166, 288 Ill. Dec. 105, 817 N.E.2d 463 (2004).

Mass.—*Com. v. Torres*, 441 Mass. 499, 806 N.E.2d 895 (2004).

N.Y.—*In re K.L.*, 1 N.Y.3d 362, 774 N.Y.S.2d 472, 806 N.E.2d 480 (2004).

11 S.C.—*South Carolina Dept. of Social Services v. Wilson*, 352 S.C. 445, 574 S.E.2d 730 (2002).

12 Md.—*Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 775 A.2d 1218 (2001).

13 Ark.—*Tsann Kuen Enterprises Co. v. Campbell*, 355 Ark. 110, 129 S.W.3d 822 (2003).

14 Wash.—*City of Redmond v. Moore*, 151 Wash. 2d 664, 91 P.3d 875 (2004).

16C C.J.S. Constitutional Law § 1886

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

A. Due Process; Deprivations and Recourse, in General

§ 1886. Notice and opportunity to be heard—Postdeprivation hearing

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑3912

In some extraordinary or unusual cases, a postdeprivation hearing may satisfy due process.

Ordinarily, due process requires that the notice and opportunity for a hearing precede any deprivation of a significant property interest¹ in order to prevent any unfair and mistaken deprivation of property.² However, due process does not always require the State to provide a hearing prior to an initial deprivation of property;³ this constitutional protection does not automatically attach to every governmental action without consideration of what rights are at stake and how they might be affected.⁴ Where property rights are involved, a mere postponement of the opportunity to be heard is not a denial of due process if the opportunity ultimately given is adequate.⁵ Although due process requires some form of hearing prior to a final deprivation of a protected property interest, the exact nature and mechanism of the required procedure will vary based upon the unique circumstances surrounding the controversy.⁶ The length and consequent severity of a deprivation are considered in determining what procedural protections are constitutionally required under the Due Process Clause.⁷

Accordingly, in some cases, a postdeprivation hearing may satisfy due process,⁸ such as in extraordinary or unusual situations,⁹ where there is a valid governmental interest which must be immediately satisfied¹⁰ or which justifies postponing the hearing

until after the event.¹¹ Postdeprivation remedies may satisfy due process in situations where a predeprivation hearing is unduly burdensome in proportion to the liberty interest at stake or where the State is truly unable to anticipate and prevent a random deprivation of the liberty interest.¹² A postdeprivation of property hearing will satisfy due process when the circumstances necessitate quick action, the length and severity of the deprivation is not serious, and the procedures underlying the decision to effect the deprivation sufficiently minimize the risk of an erroneous deprivation.¹³ A postdeprivation hearing has been held to satisfy due process where the deprivation resulted from the unauthorized failure of state agents to follow established state procedure¹⁴ even where the deprivation was intentional.¹⁵ Furthermore, an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available.¹⁶

Nevertheless, the hearing requirement cannot be done away with altogether¹⁷ and in situations where the State can feasibly provide a predeprivation hearing before taking property, it generally must do so regardless of the adequacy of a postdeprivation tort remedy to compensate for the taking.¹⁸ Whether an individual state employee him or herself is able to foresee a deprivation of property is of no consequence in determining whether due process procedural requirements are met as the controlling inquiry is solely whether the State is in a position to provide for predeprivation process.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

In the post-deprivation context, the existence of exigent circumstances warranting a deprivation before holding a hearing is irrelevant to the due process inquiry. [U.S. Const. Amend. 14](#). [Nnebe v. Daus](#), 931 F.3d 66 (2d Cir. 2019).

Deprivation of constitutionally protected property interest caused by state employee's random, unauthorized conduct does not give rise to § 1983 procedural due process claim, unless state fails to provide adequate postdeprivation remedy. [U.S. Const. Amend. 14](#); 42 U.S.C.A. § 1983. [DeMarco v. Davis](#), 914 F.3d 383 (5th Cir. 2019).

Under the *Parratt* doctrine, court may dismiss a procedural due process claim if the state provides an adequate postdeprivation remedy and (1) the deprivation was unpredictable or random; (2) predeprivation process was impossible or impracticable; and (3) the state actor was not authorized to take the action that deprived the plaintiff of property or liberty. [U.S. Const. Amend. 14](#). [Johnson v. City of Saginaw, Michigan](#), 980 F.3d 497 (6th Cir. 2020).

In situations where state deprives an individual of a cognizable liberty interest through random and unauthorized conduct of a state employee, courts will allow meaningful post-deprivation procedures to satisfy procedural due process, and the burden is on the plaintiff to show that the state post-deprivation procedures are deficient. [U.S. Const. Amend. 14](#). [Schulkers v. Kammer](#), 955 F.3d 520 (6th Cir. 2020).

An Article 78 proceeding is adequate for due process purposes even though the petitioner may not be able to recover the same relief that he could in a § 1983 suit; generally speaking, the availability of an Article 78 proceeding bars seeking relief under § 1983 when there is an adequate state post-deprivation procedure to remedy a random or arbitrary deprivation of property or liberty. [U.S.C.A. Const. Amend. 14](#); 42 U.S.C.A. § 1983; [N.Y. McKinney's CPLR 7801–7806](#). [Attallah v. New York College of Osteopathic Medicine](#), 94 F. Supp. 3d 448 (E.D. N.Y. 2015).

[END OF SUPPLEMENT]

Footnotes

- 1 U.S.—*Memphis Light, Gas and Water Division v. Craft*, 436 U.S. 1, 98 S. Ct. 1554, 56 L. Ed. 2d 30 (1978); *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
Right to some kind of prior hearing paramount
Requirements of procedural due process apply only to deprivation of interests encompassed by Fourteenth Amendment's protection of liberty and property; when protected interests are implicated right to some kind of prior hearing is paramount.
Wash.—*Arnold v. Department of Retirement Systems*, 128 Wash. 2d 765, 912 P.2d 463 (1996).
- 2 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- 3 U.S.—*Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997); *Gonzalez-Droz v. Gonzalez-Colon*, 660 F.3d 1 (1st Cir. 2011).
Miss.—*Webb v. Town Creek Master Water Management Dist. of Lee, Pontotoc, Prentiss and Union Counties*, 903 So. 2d 701 (Miss. 2005).
- 4 Alaska—*Gottstein v. State, Dept. of Natural Resources*, 223 P.3d 609 (Alaska 2010).
- 5 U.S.—*S. v. Webb*, 602 F. Supp. 2d 374 (D. Conn. 2009).
Ga.—*Pryor Organization, Inc. v. Stewart*, 274 Ga. 487, 554 S.E.2d 132 (2001).
Ind.—*State Bd. of Tax Com'rs v. Garcia*, 766 N.E.2d 341 (Ind. 2002).
Exceptions to predeprivation hearing requirement
Generally, due process requires some kind of a hearing before the State deprives a person of liberty or property, but in some circumstances, a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process.
R.I.—*L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202 (R.I. 1997).
- 6 N.C.—*Peace v. Employment Sec. Com'n of North Carolina*, 349 N.C. 315, 507 S.E.2d 272 (1998).
- 7 Mo.—*Jamison v. State, Dept. of Social Services, Div. of Family Services*, 218 S.W.3d 399 (Mo. 2007).
- 8 U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984); *S. v. Webb*, 602 F. Supp. 2d 374 (D. Conn. 2009).
- 9 U.S.—*Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972); *Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
- 10 U.S.—*Boddie v. Connecticut*, 401 U.S. 371, 91 S. Ct. 780, 28 L. Ed. 2d 113 (1971).
Cal.—*C.V.C. v. Superior Court*, 29 Cal. App. 3d 909, 106 Cal. Rptr. 123 (3d Dist. 1973).
- 11 Cal.—*People v. Lara*, 48 Cal. 4th 216, 106 Cal. Rptr. 3d 208, 226 P.3d 322 (2010).
- 12 U.S.—*Zinerman v. Burch*, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).
- 13 Vt.—*Hegarty v. Addison County Humane Soc.*, 176 Vt. 405, 2004 VT 33, 848 A.2d 1139 (2004).
- 14 U.S.—*Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981) (overruled on other grounds by, *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)).
- 15 U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
Negligent and intentional deprivations
Adequate postdeprivation remedy satisfies due process in cases of negligent deprivation of property by a state actor or a deprivation caused by the random and unauthorized intentional conduct of State's employees.
R.I.—*L.A. Ray Realty v. Town Council of Town of Cumberland*, 698 A.2d 202 (R.I. 1997).
- 16 U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).
- 17 U.S.—*Miller Newspapers, Inc. v. City of Keene*, 546 F. Supp. 831 (D.N.H. 1982).
- 18 U.S.—*Zinerman v. Burch*, 494 U.S. 113, 110 S. Ct. 975, 108 L. Ed. 2d 100 (1990).
- 19 U.S.—*Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).

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Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

[Topic Summary](#) | [Correlation Table](#)

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16C C.J.S. Constitutional Law § 1887

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1887. Scope of due process protection, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 3873, 3901, 3911

The protection of due process, insofar as a person's liberty is concerned, extends only to interests coming within the concept of liberty as the term is used in the constitutional provisions.

Although Congress has great authority to design laws to fit its own conception of sound national policy, it cannot deny the liberty protected by the Due Process Clause of the Fifth Amendment.¹ However, due process does not protect against all deprivations of liberty but only against deprivations of liberty accomplished without due process of law,² and only governmental actions which intrude upon personal liberties arbitrarily or in an utterly unreasonable manner violate the Due Process Clause.³

The protection of due process, insofar as a person's liberty is concerned, extends only to interests coming within the concept of liberty as the term is used in the constitutional provisions.⁴ In this connection, even a grievous loss is not sufficient to give rise to a claim for violation of due process rights unless the loss implicates a protected liberty interest.⁵

The Due Process Clause protects an individual's right to be deprived of liberty only by the exercise of lawful power; this is no less true with respect to the power of a sovereign to resolve disputes through judicial process than with respect to the power of a sovereign to prescribe rules of conduct for those within its sphere.⁶

The Due Process Clause is not implicated by a state official's negligent act causing unintended loss of or injury to life or liberty.⁷ Accordingly, a mere lack of due care by a state official does not "deprive" an individual of life or liberty under the Fourteenth Amendment.⁸

Undue force as deprivation.

The use of undue force by a law enforcement officer may, under some circumstances, amount to a deprivation of liberty without due process of law.⁹

Burden and standard of proof.

The Due Process Clause may mandate heightened standards of proof, such as clear and convincing evidence or even proof beyond a reasonable doubt, when fundamental rights or liberty interests are at stake, and the risk of error should be allocated disproportionately to one side or perhaps when other special factors are present.¹⁰ To determine what standard of proof is required in an adjudicatory proceeding to satisfy constitutional due process, a court balances the private interests affected, the risk of erroneous deprivation, the probable value of additional or substitute safeguards, and the governmental interests involved, and a deprivation of greater individual liberty interests requires greater procedures and stronger countervailing state interests.¹¹ When the government seeks to restrict a citizen's liberty on account of contested facts specific to that individual, it is normally and normatively the government that bears the burden of proving those predicate facts in a fair proceeding, not the individual's duty to disprove them.¹²

Judicial analysis.

When a statute impinges on a fundamental liberty interest, a court analyzes the statute's constitutionality under a strict scrutiny standard;¹³ otherwise, the challenged statute need only satisfy the rational-basis test.¹⁴ To pass strict scrutiny, the challenged statute must further a compelling state interest and be narrowly tailored to serve that interest.¹⁵

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Footnotes

- 1 U.S.—*U.S. v. Windsor*, 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013).
- 2 U.S.—*Baker v. McCollan*, 443 U.S. 137, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979).
Personal liberties protected by due process are not absolute
Iowa—*In re Detention of Willis*, 691 N.W.2d 726 (Iowa 2005).
Meaning of due process
Due process of law means the due course of legal proceedings according to those rules and forms, which have been established for the protection of private rights, securing to every person a judicial trial before he or she can be deprived of life, liberty, or property.
W. Va.—*State v. Barnhart*, 211 W. Va. 155, 563 S.E.2d 820 (2002).
- 3 Ill.—*City of Chicago v. Morales*, 177 Ill. 2d 440, 227 Ill. Dec. 130, 687 N.E.2d 53 (1997), judgment aff'd, 527 U.S. 41, 119 S. Ct. 1849, 144 L. Ed. 2d 67, 72 A.L.R.5th 665 (1999).
- 4 U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Wash.—*Arnold v. Department of Retirement Systems*, 128 Wash. 2d 765, 912 P.2d 463 (1996).
Independent right
There is no independent right to due process; one is entitled to due process only if the State deprives him or her of preexisting property or liberty.

U.S.—*Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 16 Ohio Op. 3d 386 (6th Cir. 1980).

U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).

U.S.—*J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780, 180 L. Ed. 2d 765 (2011).

U.S.—*Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).

Not implicated by city's failure to train and warn

U.S.—*Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992).

U.S.—*Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).

U.S.—*Rochin v. California*, 342 U.S. 165, 72 S. Ct. 205, 96 L. Ed. 183, 25 A.L.R.2d 1396 (1952).

D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).

Heightened standard of proof

Due process requires a heightened standard of proof in certain categories of civil cases involving sensitive liberty interests and attempts by the government to deprive individuals of such interests, such as termination of parental rights, involuntary civil commitments, deportation proceedings, and denaturalization proceedings.

Alaska—*DeNuptiis v. Unocal Corp.*, 63 P.3d 272 (Alaska 2003).

Element of minimum procedural due process

The standard of proof is an element of the minimum procedural due process required in proceedings affecting protected liberty or property interests; the standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision.

Mass.—*Querubin v. Com.*, 440 Mass. 108, 795 N.E.2d 534 (2003).

Mass.—*Doe v. Sex Offender Registry Bd.*, 428 Mass. 90, 697 N.E.2d 512 (1998).

D.C.—*In re W.M.*, 851 A.2d 431 (D.C. 2004).

U.S.—*Dragovich v. U.S. Dept. of the Treasury*, 848 F. Supp. 2d 1091 (N.D. Cal. 2012).

Fla.—*Florida Dept. Of Children And Families v. F.L.*, 880 So. 2d 602 (Fla. 2004).

Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).

Wis.—*State v. Smith*, 2009 WI App 16, 316 Wis. 2d 165, 762 N.W.2d 856 (Ct. App. 2008), decision aff'd, 2010 WI 16, 323 Wis. 2d 377, 780 N.W.2d 90 (2010).

Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).

U.S.—*Kitchen v. Herbert*, 755 F.3d 1193 (10th Cir. 2014), cert. denied, 135 S. Ct. 265, 190 L. Ed. 2d 138 (2014); *Dragovich v. U.S. Dept. of the Treasury*, 848 F. Supp. 2d 1091 (N.D. Cal. 2012).

Alaska—*Treacy v. Municipality of Anchorage*, 91 P.3d 252 (Alaska 2004).

Wis.—*State v. Post*, 197 Wis. 2d 279, 541 N.W.2d 115 (1995).

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16C C.J.S. Constitutional Law § 1888

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1888. Source of liberty interests

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873

Constitutionally protected liberty interests may flow from the Constitution or may be created by state law, rules, or regulations.

Constitutionally protected liberty interests may flow from either the Federal Constitution or the constitution of a state,¹ or more specifically, from the Due Process Clause itself,² or may be created by state law,³ rules,⁴ or regulations.⁵ Once the State provides its citizens with certain statutory rights beyond those secured by the Constitution itself, the Constitution forbids the State from depriving individuals of those statutory rights without due process of law.⁶ Accordingly, state statutes or regulations can create a due process liberty interest where none otherwise would have existed.⁷

For a state law or regulation to create a constitutionally protected liberty interest, it must contain explicit mandatory language and place substantive limitations or specific substantive predicates on the exercise of official discretion.⁸ A state may create a liberty interest if the State places substantive limitations on the exercise of the decision maker's discretion, but to have that effect, those limitations must involve more than mere procedural guidelines to channel the decision-making of officials and must constitute particular standards or criteria to guide the State's decision makers.⁹ One of the hallmarks of a substantive limitation on a state decision maker's discretion that may give rise to a liberty interest is the use of explicit mandatory language,

that is, specific directives to the decision maker that if the regulations' substantive predicates are present, a particular outcome must follow.¹⁰ Thus, laws that dictate particular decisions given particular facts can create liberty interests but laws granting a significant degree of discretion cannot.¹¹ For example, if a state's decision maker is not required to base its decision concerning a person's release from custody on objective and defined criteria but instead can deny the requested relief for any constitutionally permissible reason or for no reason at all, the State has not created a constitutionally protected liberty interest.¹² So, state regulatory schemes do not create a constitutionally protected liberty interest merely because regulations incorporate seemingly mandatory language,¹³ and the mere presence of mandatory language will not create a liberty interest subject to procedural due process analysis.¹⁴ Unfettered discretion shown by the absence of standards or mandatory prerequisites does not give rise to an entitlement and, thus, does not create a liberty interest subject to procedural due process analysis.¹⁵

Although it has been held that a liberty interest can be created by mutually explicit understandings,¹⁶ the implied contract aspect of "mutually explicit understandings" has far more useful place in determining protected property interests than in determining liberty interests protected by the Due Process Clause of the Fourteenth Amendment.¹⁷ It has been said that a protected liberty interest under the Fourteenth Amendment may arise only when implicated by a constitution, state law, or regulation.¹⁸

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Footnotes

- 1 U.S.—*Wilkinson v. Austin*, 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005); *Stephens v. Canino*, 2014 WL 6698308 (E.D. Pa. 2014).
Del.—*Helman v. State*, 784 A.2d 1058 (Del. 2001).
Wash.—*In re Pullman*, 167 Wash. 2d 205, 218 P.3d 913 (2009).
- 2 U.S.—*Fifield v. Eaton*, 669 F. Supp. 2d 294 (W.D. N.Y. 2009).
Conn.—*State v. Garcia*, 233 Conn. 44, 658 A.2d 947 (1995).
R.I.—*DiCiantis v. Wall*, 795 A.2d 1121 (R.I. 2002).
Tex.—*Ex parte Montgomery*, 894 S.W.2d 324 (Tex. Crim. App. 1995).
- 3 U.S.—*Hewitt v. Helms*, 459 U.S. 460, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983); *Wilkerson v. Goodwin*, 774 F.3d 845 (5th Cir. 2014); *Stephens v. Canino*, 2014 WL 6698308 (E.D. Pa. 2014).
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Conn.—*State v. Garcia*, 233 Conn. 44, 658 A.2d 947 (1995).
Del.—*Helman v. State*, 784 A.2d 1058 (Del. 2001).
N.C.—*Jones v. Keller*, 364 N.C. 249, 698 S.E.2d 49 (2010).
R.I.—*DiCiantis v. Wall*, 795 A.2d 1121 (R.I. 2002).
Wash.—*In re Gentry*, 170 Wash. 2d 711, 245 P.3d 766 (2010).
Expectation or interest created by state laws or policies
U.S.—*Wilkinson v. Austin*, 545 U.S. 209, 125 S. Ct. 2384, 162 L. Ed. 2d 174 (2005).
Narrowly circumscribed
Wash.—*In re Meyer*, 142 Wash. 2d 608, 16 P.3d 563 (2001).
Greater than language of statutes
A constitutionally protected liberty interest encompasses far more than interests conferred by language in state statutes.
U.S.—*Board of Pardons v. Allen*, 482 U.S. 369, 107 S. Ct. 2415, 96 L. Ed. 2d 303 (1987).
Source independent of state law
Where deprivation of a convicted offender's liberty constitutes grievous loss, as in cases involving revocation of parole, the protections of due process apply independently of state law; however, where a deprivation of liberty is substantial but significantly different from grievous loss, the protections of due process apply only where state policies themselves create a liberty interest.
Colo.—*Lawson v. Zavaras*, 966 P.2d 581 (Colo. 1998).

- 4 U.S.—*Johnson v. Parke*, 642 F.2d 377 (10th Cir. 1981).
- 5 Wash.—*In re Dyer*, 143 Wash. 2d 384, 20 P.3d 907 (2001).
- 6 Conn.—*State v. Garcia*, 233 Conn. 44, 658 A.2d 947 (1995).
- Protection necessary**
Once a state has granted a liberty interest by statute, due process protections are necessary to insure that the state-created right is not arbitrarily abrogated.
- Wash.—*State ex rel. T.B. v. CPC Fairfax Hosp.*, 129 Wash. 2d 439, 918 P.2d 497 (1996).
- 7 Wash.—*In re Dyer*, 143 Wash. 2d 384, 20 P.3d 907 (2001).
- New liberty interests**
While some liberty interests are so fundamental that they are inherently subject to protections of procedural due process, states are also capable of creating new liberty interests, which then become entitled to federal constitutional protection.
- Md.—*Branch v. McGeeney*, 123 Md. App. 330, 718 A.2d 631 (1998).
- 8 Iowa—*State v. Love*, 589 N.W.2d 49 (Iowa 1998).
- 9 Md.—*Branch v. McGeeney*, 123 Md. App. 330, 718 A.2d 631 (1998).
- 10 Md.—*Branch v. McGeeney*, 123 Md. App. 330, 718 A.2d 631 (1998).
- Wash.—*State v. Baldwin*, 150 Wash. 2d 448, 78 P.3d 1005 (2003).
- 11 Wash.—*State v. Baldwin*, 150 Wash. 2d 448, 78 P.3d 1005 (2003).
- 12 Md.—*Branch v. McGeeney*, 123 Md. App. 330, 718 A.2d 631 (1998).
- 13 Ohio—*State ex rel. Larkins v. Wilkinson*, 79 Ohio St. 3d 477, 1997-Ohio-139, 683 N.E.2d 1139 (1997).
- 14 Tex.—*Ex parte Montgomery*, 894 S.W.2d 324 (Tex. Crim. App. 1995).
- 15 Tex.—*Ex parte Montgomery*, 894 S.W.2d 324 (Tex. Crim. App. 1995).
- 16 U.S.—*Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980); *Walker v. Hughes*, 558 F.2d 1247 (6th Cir. 1977).
- 17 U.S.—*Jago v. Van Curen*, 454 U.S. 14, 102 S. Ct. 31, 70 L. Ed. 2d 13 (1981).
- 18 Ky.—*Mahoney v. Carter*, 938 S.W.2d 575 (Ky. 1997).

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16C C.J.S. Constitutional Law § 1889

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1889. Nature and requisites of life or liberty interests

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873

The terms "life" and "liberty" are used in the constitutional guaranties in a broad sense as including all personal, as distinguished from property, rights, but only a limited range of interests is embraced within the concept of liberty guaranteed by due process provisions.

The terms "life" and "liberty" are used in the constitutional guaranties in a broad sense as including all personal, as distinguished from property, rights.¹ In fact, the words "life" and "liberty" as used in a state due process clause are to be taken in their broadest sense.² Liberty protected by due process is a broad concept that extends to the full range of conduct which the individual is free to pursue and cannot be restricted except for a proper governmental objective.³ It should be noted that legitimate claims of entitlement under the Due Process Clause generally entail vested liberty or property rights.⁴

However, the concept of liberty protected by the Due Process Clause of the Fourteenth Amendment is not limitless.⁵ "Liberty" within the Due Process Clauses applies to those basic interests which are possessed by citizens of a free society and to those additional interests which are created by the State for the benefit and enjoyment of its people.⁶ An individual has a "liberty interest" in the application of any rule affirmatively recognizing a claim of liberty or limiting the exercise of governmental power over the person.⁷ The concept of liberty denotes freedom from bodily restraint, harm, and punishment.⁸ Although freedom from

physical restraint or commitment has always been at the core of the liberty protected by the Due Process Clause,⁹ that liberty interest is not absolute.¹⁰ Accordingly, in certain narrow circumstances, a state can, without violating substantive due process, provide for the forcible civil detainment of people who are unable to control their behavior and who thereby pose a danger to the public.¹¹ Due process requires that the nature of a commitment bear some reasonable relation to the purpose for which the individual is committed.¹² A law that impinges on a fundamental right such as freedom from restraint satisfies the Due Process Clause only if it furthers a compelling state interest and is narrowly tailored to further that interest.¹³ Accordingly, a statute authorizing a deprivation of liberty without a trial constitutes impermissible regulation if the deprivation of liberty is excessive in relation to the regulatory goal advanced by the government.¹⁴ It should be noted that constitutional due process prohibitions on the confinement of persons, if they are not mentally ill and do not pose some danger to themselves or others, apply not only at the time of the original commitment but also throughout the period of confinement.¹⁵ Further, when a state takes a person into its custody and holds the person there against his or her will, the Constitution imposes upon the State a corresponding duty to assume some responsibility for the person's safety and general well being.¹⁶ This affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him or her but from the limitation which is imposed on the person's freedom to act on his or her own behalf.¹⁷

The Due Process Clause of the Fourteenth Amendment to the United States Constitution incorporates many or most of the specific protections defined in the Bill of Rights, which originally restricted only the federal government.¹⁸ However, the substantive liberties protected by the Fourteenth Amendment are not limited to those rights already guaranteed against federal interference by the express provisions of the first eight amendments to the Constitution.¹⁹ The "liberty" guaranteed and protected by constitutional provisions embraces also the freedom of an individual to acquire knowledge,²⁰ the right to marry,²¹ the right to have children,²² or to establish a home and raise children,²³ and to direct the education and upbringing of one's children,²⁴ the rights to enjoy marital privacy, use contraception, preserve one's bodily integrity, and choose abortion,²⁵ the right to worship God²⁶ or otherwise define one's own concept of existence, of meaning, of the universe, and of the mystery of human life,²⁷ the right to contract,²⁸ and the right to engage in any of the common occupations of life.²⁹ There is also a liberty interest in refusing medical treatment,³⁰ and an individual has a due process right to make decisions affecting litigation placing his or her liberty at risk.³¹

On the other hand, various particular rights are not considered as liberty interests,³² such as the right to be free from arbitrary action,³³ the interest in avoiding competition,³⁴ the right to assistance in committing suicide,³⁵ and the right of an adjoining property owner to participate in a hearing upon a land use application.³⁶ State action that forecloses a single or narrow range of employment opportunities does not implicate a liberty interest protected by the Due Process Clause.³⁷

It should be noted that the substantive liberties protected by the Fourteenth Amendment are not limited to those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified.³⁸

A state-created procedural right is not of itself a liberty interest within the meaning of the Fourteenth Amendment,³⁹ and the existence of some adverse impact arising from a governmental decision is not a basis for finding a constitutional liberty interest requiring due process protection.⁴⁰

To determine whether the requirements of due process apply, the court must look not to the "weight" but to the nature of the interest at stake to see if that interest is within the constitutional protection of liberty.⁴¹ It has been said that the existence of a liberty interest protected by the Due Process Clause depends on the construction of the relevant statutes and the nature of

the interest at stake.⁴² However, the relative weight of a liberty interest is relevant to the extent of due process to which one is entitled although where the interest is truly de minimis, procedural rights can be dispensed with altogether.⁴³ In circumstances where the government interest is sufficiently weighty, an individual's fundamental liberty interest may be subordinated to the greater needs of society.⁴⁴

Children.

A child's due process liberty interests are not identical to those of an adult.⁴⁵

CUMULATIVE SUPPLEMENT

Cases:

As the length of detainee's confinement grows, so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention. *U.S. Const. Amend. 5. Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

A detainee asserting a Fourteenth Amendment claim for deliberate indifference to his medical needs can allege either that defendants knew that failing to provide the complained of medical treatment would pose a substantial risk to his health, or that the defendants should have known that failing to provide the omitted medical treatment would pose a substantial risk to the detainee's health. *U.S. Const. Amend. 14. Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019).

Under the "special-relationship doctrine," a state or its agents can be liable under § 1983 for due process violation for failing to protect people from harm if they have deprived those people of liberty and made them completely dependent on the state for their basic needs. *U.S. Const. Amend. 14; 42 U.S.C.A. § 1983. Dahn v. Amedei*, 867 F.3d 1178 (10th Cir. 2017).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Quinn v. Syracuse Model Neighborhood Corp.*, 613 F.2d 438 (2d Cir. 1980).
N.Y.—*Aster v. Board of Ed. of City of New York*, 72 Misc. 2d 953, 339 N.Y.S.2d 903 (Sup 1972).
- 2 Utah—*Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, 44 P.3d 663 (Utah 2002).
Constitution for a free people
In a Constitution for a free people, there can be no doubt that the meaning of "liberty" must be broad.
U.S.—*Perry v. Secretary, Florida Dept. of Corrections*, 664 F.3d 1359 (11th Cir. 2011).
- 3 Haw.—*State v. Guidry*, 105 Haw. 222, 96 P.3d 242 (2004).
Fundamental interests
Due Process Clause of the Fourteenth Amendment protects those liberty interests that are deemed fundamental and are deeply rooted in the United State's history and tradition.
Nev.—*In re Guardianship of L.S. & H.S.*, 120 Nev. 157, 87 P.3d 521 (2004).
- 4 Wash.—*Willoughby v. Department of Labor and Industries of the State of Wash.*, 147 Wash. 2d 725, 57 P.3d 611 (2002).
- 5 U.S.—*Hewitt v. Helms*, 459 U.S. 460, 103 S. Ct. 864, 74 L. Ed. 2d 675 (1983).
- 6 U.S.—*U. S. ex rel. Hoss v. Cuyler*, 452 F. Supp. 256 (E.D. Pa. 1978).
- 7 N.H.—*Knowles v. Warden, New Hampshire State Prison*, 140 N.H. 387, 666 A.2d 972 (1995).

- 8 U.S.—*Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977).
Freedom from bodily restraint
The freedom from bodily restraint lies at the core of the liberty protected by the Due Process Clause, and its threatened loss through legal proceedings demands due process protection.
U.S.—*Turner v. Rogers*, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011).
Imprisonment
(1) Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Due Process Clause protects.
U.S.—*Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013).
(2) Imprisonment for even one day has a substantial impact on a man's liberty.
Wis.—*State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197 (2004).
"Commitment"
"Commitment" is a deprivation of liberty requiring due process protection; it is incarceration against one's will whether it is called "criminal" or "civil."
Conn.—*In re Jason C.*, 255 Conn. 565, 767 A.2d 710 (2001).
Civil commitment
Civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection.
Cal.—*In re Howard N.*, 35 Cal. 4th 117, 24 Cal. Rptr. 3d 866, 106 P.3d 305 (2005).
Fla.—*Murray v. Regier*, 872 So. 2d 217 (Fla. 2002).
Va.—*Townes v. Com.*, 269 Va. 234, 609 S.E.2d 1 (2005).
Confinement in mental hospital
A person subjected to an involuntary civil commitment proceeding has a substantial liberty interest in avoiding confinement in a mental hospital.
Va.—*Townes v. Com.*, 269 Va. 234, 609 S.E.2d 1 (2005).
- 9 Mass.—*In re Dutil*, 437 Mass. 9, 768 N.E.2d 1055 (2002).
S.C.—*In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 568 S.E.2d 338 (2002).
Wash.—*In re Detention of Thorell*, 149 Wash. 2d 724, 72 P.3d 708 (2003).
Wis.—*In re Commitment of Rachel*, 2002 WI 81, 254 Wis. 2d 215, 647 N.W.2d 762 (2002).
- 10 Iowa—*In re Detention of Garren*, 620 N.W.2d 275 (Iowa 2000).
Minn.—*In re Linehan*, 594 N.W.2d 867 (Minn. 1999).
Wyo.—*Reiter v. State*, 2001 WY 116, 36 P.3d 586 (Wyo. 2001).
- 11 Mass.—*In re Dutil*, 437 Mass. 9, 768 N.E.2d 1055 (2002).
Balancing of interests
Mass.—*Paquette v. Com.*, 440 Mass. 121, 795 N.E.2d 521 (2003).
Government's duty to provide aid or services
(1) In order for State's deprivation of a person's liberty to trigger a duty to provide aid or services, such restraint must involve incarceration, institutionalization, or other similar restraint.
Ill.—*Lewis E. v. Spagnolo*, 186 Ill. 2d 198, 238 Ill. Dec. 1, 710 N.E.2d 798, 141 Ed. Law Rep. 222 (1999).
(2) Where a person is involuntarily committed and thereby dependent on the government for his or her basic needs, an actionable claim for a substantive due process violation is made out if and when a decision by the State through its professional administrators with respect to services is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such judgment.
N.Y.—*Mark G. v. Sabol*, 93 N.Y.2d 710, 695 N.Y.S.2d 730, 717 N.E.2d 1067 (1999).
Kan.—*State v. Van Hoet*, 277 Kan. 815, 89 P.3d 606 (2004).
Wash.—*In re Albrecht*, 147 Wash. 2d 1, 51 P.3d 73 (2002).
Iowa—*State v. Hernandez-Lopez*, 639 N.W.2d 226 (Iowa 2002).
Vt.—*In re P.S.*, 167 Vt. 63, 702 A.2d 98 (1997).
- 12 U.S.—*DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).
- 13
14
15
16 **Minimal custodial standards**
"Process" that Due Process Clause guarantees in connection with any deprivation of liberty includes continuing obligation to satisfy certain minimal custodial standards.

- 17 U.S.—*Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992).
 U.S.—*DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989).
- 18 § 1837.
- 19 U.S.—*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).
- 20 Ill.—*In re M.H.*, 196 Ill. 2d 356, 256 Ill. Dec. 297, 751 N.E.2d 1134 (2001).
- 21 U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *Campaign for Southern Equality v. Bryant*, 2014 WL 6680570 (S.D. Miss. 2014); *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014); *Lieberman v. Husted*, 900 F. Supp. 2d 767 (S.D. Ohio 2012).
 Ill.—*In re M.H.*, 196 Ill. 2d 356, 256 Ill. Dec. 297, 751 N.E.2d 1134 (2001).
 Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
 Me.—*Doe I v. Williams*, 2013 ME 24, 61 A.3d 718 (Me. 2013).
- 22 U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *Campaign for Southern Equality v. Bryant*, 2014 WL 6680570 (S.D. Miss. 2014); *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014); *Lieberman v. Husted*, 900 F. Supp. 2d 767 (S.D. Ohio 2012).
 Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
 Me.—*Doe I v. Williams*, 2013 ME 24, 61 A.3d 718 (Me. 2013).
- 23 Ill.—*In re M.H.*, 196 Ill. 2d 356, 256 Ill. Dec. 297, 751 N.E.2d 1134 (2001).
Interests vital to self-fulfillment
 "Liberty" of Due Process Clause is grounded in protecting those concerns, such as parenting, that are vital to individual's self-fulfillment and not in preserving formalities.
 W. Va.—*State ex rel. Roy Allen S. v. Stone*, 196 W. Va. 624, 474 S.E.2d 554 (1996).
- 24 U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014); *Lieberman v. Husted*, 900 F. Supp. 2d 767 (S.D. Ohio 2012).
 Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
 Me.—*Doe I v. Williams*, 2013 ME 24, 61 A.3d 718 (Me. 2013).
Family and parenthood
 Constitution places limits on State's right to interfere with person's most basic decisions about family and parenthood.
 U.S.—*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).
- 25 U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014); *Lieberman v. Husted*, 900 F. Supp. 2d 767 (S.D. Ohio 2012).
 Iowa—*Sanchez v. State*, 692 N.W.2d 812, 16 A.L.R.6th 825 (Iowa 2005).
 Me.—*Doe I v. Williams*, 2013 ME 24, 61 A.3d 718 (Me. 2013).
Damage to bodily integrity and security
 Citizen's liberty interest, protected by substantive due process, includes a right to be free of damage to bodily integrity and security caused by the State.
 U.S.—*Colbert v. District of Columbia*, 2015 WL 135887 (D.D.C. 2015).
- 26 Ill.—*In re M.H.*, 196 Ill. 2d 356, 256 Ill. Dec. 297, 751 N.E.2d 1134 (2001).
- 27 U.S.—*Hamby v. Parnell*, 56 F. Supp. 3d 1056 (D. Alaska 2014).
- 28 Ill.—*In re M.H.*, 196 Ill. 2d 356, 256 Ill. Dec. 297, 751 N.E.2d 1134 (2001).
- 29 Cal.—*Hughes v. Board of Architectural Examiners*, 17 Cal. 4th 763, 72 Cal. Rptr. 2d 624, 952 P.2d 641 (1998).
 Tenn.—*Rowe v. Board of Educ. of City of Chattanooga*, 938 S.W.2d 351, 116 Ed. Law Rep. 503 (Tenn. 1996).
 Vt.—*Mellin v. Flood Brook Union School Dist.*, 173 Vt. 202, 790 A.2d 408, 162 Ed. Law Rep. 369 (2001).
- 30 U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *McCarty v. Roos*, 998 F. Supp. 2d 950 (D. Nev. 2014).
 Me.—*Green v. Commissioner of Dept. of Mental Health, Mental Retardation and Substance Abuse Services*, 2001 ME 86, 776 A.2d 612 (Me. 2001).
State's interest

In determining an incompetent person's right to withdrawal of life-sustaining medical treatment, a state may properly decline to make judgments about the quality of life that a particular person may enjoy and may simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the person.

U.S.—*Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990).

Okla.—*Towne v. Hubbard*, 2000 OK 30, 3 P.3d 154 (Okla. 2000).

U.S.—*Schlake v. Beatrice Production Credit Ass'n*, 596 F.2d 278 (8th Cir. 1979).

U.S.—*Stratford v. State-House, Inc.*, 542 F. Supp. 1008 (E.D. Ky. 1982).

U.S.—*Izaak Walton League of America v. Marsh*, 655 F.2d 346, 67 A.L.R. Fed. 1 (D.C. Cir. 1981).

As to constitutions as not granting persons any right to be free from competition, see § 1865.

U.S.—*Washington v. Glucksberg*, 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997).

Vt.—*In re Great Waters of America, Inc.*, 140 Vt. 105, 435 A.2d 956 (1981).

Vt.—*Mellin v. Flood Brook Union School Dist.*, 173 Vt. 202, 790 A.2d 408, 162 Ed. Law Rep. 369 (2001).

U.S.—*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

U.S.—*Shango v. Jurich*, 681 F.2d 1091 (7th Cir. 1982) (disapproved of on other grounds by, *Jones v. Lane*, 568 F. Supp. 1113 (N.D. Ill. 1983)).

Administrative body

U.S.—*Bills v. Henderson*, 631 F.2d 1287 (6th Cir. 1980).

U.S.—*O'Bannon v. Town Court Nursing Center*, 447 U.S. 773, 100 S. Ct. 2467, 65 L. Ed. 2d 506 (1980).

U.S.—*Jago v. Van Curen*, 454 U.S. 14, 102 S. Ct. 31, 70 L. Ed. 2d 13 (1981).

Grievous loss

Process to which individual is entitled depends on extent to which individual will be condemned to suffer grievous loss; question is not merely weight of individual's interest but also whether nature of interest is one within contemplation of "liberty or property" language of Due Process Clause.

Fla.—*Pullen v. State*, 802 So. 2d 1113 (Fla. 2001).

Idaho—*Bradbury v. Idaho Judicial Council*, 136 Idaho 63, 28 P.3d 1006 (2001).

Tenn.—*Willis v. Tennessee Dept. of Correction*, 113 S.W.3d 706 (Tenn. 2003).

Iowa—*State v. Hernandez-Lopez*, 639 N.W.2d 226 (Iowa 2002).

Md.—*In re Adoption/Guardianship No. 6Z970003* in Dist. Court for Montgomery County, 127 Md. App. 33, 731 A.2d 467 (1999) (disapproved of on other grounds by, *In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 746 A.2d 379 (2000)).

16C C.J.S. Constitutional Law § 1890

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1890. Limitations and restrictions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873, 3877

Liberty guaranteed by constitutional guaranties of due process implies absence of arbitrary interferences but not immunity from reasonable regulations.

"Liberty" implies the absence of arbitrary restraint,¹ not immunity from reasonable regulations and prohibitions imposed in the interests of the community.² The Due Process Clause does not have the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the general welfare of the community.³

However, life and liberty cannot be restricted except for a proper governmental objective.⁴ Due process is not offended by a temporary loss of liberty when a person's life may be threatened.⁵

The Fourteenth Amendment's liberty right to choose and follow one's calling is not infringed by the inevitable interruptions of our daily routine as a result of legal process which all of us may experience from time to time.⁶

War power.

Direct interference with liberty and abridgment of constitutional guaranties of freedom can be justified under the war power only where the danger to the government is real, impending, and imminent⁷ since an individual cannot be deprived of his or her right of freedom of person even in war time except through machinery which guarantees the fundamentals of due process of law.⁸

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Footnotes

- 1 U.S.—*Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U.S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914).
Conn.—*Brazo v. Real Estate Commission*, 177 Conn. 515, 418 A.2d 883 (1979).
Ill.—*Artisan Design Build, Inc. v. Bilstrom*, 397 Ill. App. 3d 317, 337 Ill. Dec. 238, 922 N.E.2d 361 (2d Dist. 2009), as corrected, (Mar. 4, 2010).
- 2 U.S.—*Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U.S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914).
Conn.—*Brazo v. Real Estate Commission*, 177 Conn. 515, 418 A.2d 883 (1979).
- 3 U.S.—*Atlantic Coast Line R. Co. v. City of Goldsboro*, 232 U.S. 548, 34 S. Ct. 364, 58 L. Ed. 721 (1914).
Conn.—*Brazo v. Real Estate Commission*, 177 Conn. 515, 418 A.2d 883 (1979).
Making right more difficult to exercise
Not every law which makes a right more difficult to exercise is, ipso facto, an infringement of that right.
U.S.—*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).
Reasonable regulation
Regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.
U.S.—*West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703, 108 A.L.R. 1330 (1937).
- 4 U.S.—*Bolling v. Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), opinion supplemented on other grounds, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, 71 Ohio L. Abs. 584 (1955).
- 5 Fla.—*In re Byrne*, 402 So. 2d 383 (Fla. 1981).
- 6 U.S.—*Conn v. Gabbert*, 526 U.S. 286, 119 S. Ct. 1292, 143 L. Ed. 2d 399 (1999).
- 7 U.S.—*Schueller v. Drum*, 51 F. Supp. 383 (E.D. Pa. 1943).
- 8 U.S.—*Ex parte Stewart*, 47 F. Supp. 410 (S.D. Cal. 1942).

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16C C.J.S. Constitutional Law § 1891

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1891. Reputation or community standing; stigmatizing action

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873, 4040

A constitutionally protected liberty interest exists where there is some stigma to one's good name, reputation, or integrity, but only when coupled with some more "tangible" interest that is affected or a legal right that is altered, such as the loss of present or future employment.

There is no fundamental constitutional right to one's own reputation;¹ an injury to reputation by itself is generally not a deprivation of a liberty interest affording the protections of due process.² More specifically, one's good name and reputation alone, apart from some more tangible interest, do not implicate liberty interests sufficient to invoke due process protections.³ Thus, the frequently drastic effect of a stigma which may result from a defamation by the government in a variety of contexts does not by itself constitute harm sufficient to be afforded the protections of due process.⁴ However, a constitutionally protected liberty interest exists where there is some stigma to one's good name, reputation, or integrity, coupled with some more "tangible" interest that is affected or a legal right that is altered,⁵ such as the loss of present or future employment,⁶ and such action invokes due process protections.⁷ This requirement of a tangible interest is referred to as the "stigma plus" test.⁸ It has been said that where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him or her, minimal requirements of due process must be satisfied.⁹

Under at least one state constitution, reputation is a fundamental right entitled to the protection of procedural due process even in the absence of a more "tangible" right.¹⁰

For due process purposes, an individual's liberty interest is impaired where a government's action seriously damages his or her standing and associations in the community or damages the person's good name, reputation, honor, or integrity or imposes on the person a stigma or other disability that forecloses his or her freedom to take advantage of other employment opportunities.¹¹ It has been said that the liberty interest is an individual's interest in being free to move about, live, and work at his or her chosen vocation without the burden of an unjustified label of infamy.¹²

However, a distinct alteration of a legal right or status, in addition to the injury to reputation, is required before a liberty interest is impaired.¹³ Accordingly, deprivation of liberty protected by the constitution by governmental action altering a right or status previously held under state law combined with an injury resulting from defamation justifies the invocation of procedural safeguards,¹⁴ and this requirement is also applicable when injury to reputation is combined with a loss or damage to a property interest.¹⁵

The due process requirement of a hearing at the time when a deprivation can still be prevented is particularly important in cases involving reputational injuries since the deprivation of a constitutionally protected property interest may be remedied post hoc by monetary damages but an injury inflicted on one's reputation cannot be so easily overcome.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

Police department's policy regarding cleared-closed case files did not violate arrestee's due process rights by continuing to link him to a robbery, which he did not commit; potential for public stigma did not deprive arrestee of life, liberty, or property. [U.S. Const. Amend. 14. *Swanigan v. City of Chicago*, 881 F.3d 577 \(7th Cir. 2018\).](#)

Statements identifying arrestee as the perpetrator in campus sexual assaults and accusing him of assaulting women through indecent exposure, groping, and masturbation were not false, and thus did not support a stigma-plus due process claim against cities, police departments, and police officers, given that he was arrested on charges based on that conduct. [U.S. Const. Amend. 14. *Grubbs v. University of Delaware Police Department*, 174 F. Supp. 3d 839 \(D. Del. 2016\).](#)

Statements about gun rights advocacy organization in New York Governor's press release and subsequent guidance letters from Superintendent of Department of Financial Services (DFS) to financial institutions and insurers, including statements insinuating that having the organization as a customer was a potential reputation risk and urging the institutions and insurers to drop the organization as a customer in order to promote public health and safety, were purely government speech relaying New York's opinions about public safety, gun regulation, and the role that insurance companies and financial institutions played in shaping public opinion, and therefore, such statements did not satisfy the "stigma" component of the organization's "stigma-plus" due process claims. [U.S. Const. Amend. 14. *National Rifle Association of America v. Cuomo*, 350 F. Supp. 3d 94 \(N.D. N.Y. 2018\).](#)

[END OF SUPPLEMENT]

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Footnotes

¹ U.S.—[Zutz v. Nelson](#), 601 F.3d 842 (8th Cir. 2010).

- 2 U.S.—*Mead v. Independence Ass'n*, 684 F.3d 226 (1st Cir. 2012); *Rehberg v. Paulk*, 611 F.3d 828 (11th Cir. 2010), *aff'd*, 132 S. Ct. 1497, 182 L. Ed. 2d 593 (2012).
Fla.—*State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).
Ga.—*State v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998).
Neb.—*V.C. v. Casady*, 262 Neb. 714, 634 N.W.2d 798 (2001).
Nev.—*Hernandez v. Bennett-Haron*, 287 P.3d 305, 128 Nev. Adv. Op. No. 54 (Nev. 2012).
Wash.—*In re Meyer*, 142 Wash. 2d 608, 16 P.3d 563 (2001).
No independent protection for individual's reputation under state constitution
Mass.—*Vaccaro v. Vaccaro*, 425 Mass. 153, 680 N.E.2d 55 (1997).
Active shoplifters notice
Plaintiff whose name and photograph appeared on flyer which was captioned "Active Shoplifters" and which was distributed by police chiefs to merchants did not have any legal guarantee of present enjoyment of reputation which was altered as result of police chiefs' actions and thus suffered no deprivation of any "liberty" interest within due process guarantee.
U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
Public censure or reprimand
Public censure or reprimand does not give rise to a procedural due process claim so long as injury is solely to a plaintiff's reputation.
Vt.—*LaFlamme v. Essex Junction School Dist.*, 170 Vt. 475, 750 A.2d 993, 144 Ed. Law Rep. 306 (2000).
3 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
Neb.—*Benitez v. Rasmussen*, 261 Neb. 806, 626 N.W.2d 209 (2001).
Stigma
The stigma that may result from a defamatory disciplinary action does not by itself implicate a liberty or property interest protected by the Due Process Clause.
Vt.—*LaFlamme v. Essex Junction School Dist.*, 170 Vt. 475, 750 A.2d 993, 144 Ed. Law Rep. 306 (2000).
4 Fla.—*State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).
5 Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).
Neb.—*State v. Worm*, 268 Neb. 74, 680 N.W.2d 151 (2004).
N.Y.—*People v. David W.*, 95 N.Y.2d 130, 711 N.Y.S.2d 134, 733 N.E.2d 206 (2000).
Necessary showing
On a procedural due process claim, a person who alleges that he or she has suffered stigmatization at the hands of a government actor must show an adverse effect on some interest more tangible than reputational harm.
U.S.—*URI Student Senate v. Town Of Narragansett*, 631 F.3d 1 (1st Cir. 2011).
Government officials' communications
When coupled with government officials' communications that stigmatize the plaintiff, a claim of deprivation of liberty or property interest without due process will lie where there is a loss, infringement, or denial of a government right or benefit previously enjoyed.
La.—*Driscoll v. Stucker*, 893 So. 2d 32 (La. 2005).
6 Fla.—*State v. Robinson*, 873 So. 2d 1205 (Fla. 2004).
Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).
Neb.—*V.C. v. Casady*, 262 Neb. 714, 634 N.W.2d 798 (2001).
7 U.S.—*Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L. Ed. 2d 515 (1971).
8 U.S.—*Velez v. Levy*, 401 F.3d 75, 196 Ed. Law Rep. 76 (2d Cir. 2005); *Graham v. City of Philadelphia*, 402 F.3d 139 (3d Cir. 2005).
Ind.—*Myers v. Coats*, 966 N.E.2d 652 (Ind. Ct. App. 2012).
Kan.—*Schuyler v. Roberts*, 285 Kan. 677, 175 P.3d 259 (2008).
Me.—*Doe I v. Williams*, 2013 ME 24, 61 A.3d 718 (Me. 2013).
Mo.—*Jamison v. State, Dept. of Social Services, Div. of Family Services*, 218 S.W.3d 399 (Mo. 2007).
Neb.—*Potter v. Board of Regents of the University of Nebraska*, 287 Neb. 732, 844 N.W.2d 741, 303 Ed. Law Rep. 557 (2014).

- 9 Tex.—*University of Texas Medical School at Houston v. Than*, 901 S.W.2d 926, 101 Ed. Law Rep. 1251 (Tex. 1995).
- 10 Pa.—*Simon v. Com.*, 659 A.2d 631 (Pa. Commw. Ct. 1995).
- 11 U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
W. Va.—*Wilhelm v. West Virginia Lottery*, 198 W. Va. 92, 479 S.E.2d 602 (1996).
- No infringement of liberty interest**
Library advisory board's evaluation of head librarian was simply a negative job evaluation which did not infringe upon his liberty interest as it did not impugn head librarian's honesty, integrity, or morality; therefore, head librarian had no right to a pretermination hearing.
- Alaska—*Revelle v. Marston*, 898 P.2d 917 (Alaska 1995).
- 12 W. Va.—*Wilhelm v. West Virginia Lottery*, 198 W. Va. 92, 479 S.E.2d 602 (1996).
- 13 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
- 14 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
- 15 Cal.—*Lackner v. St. Joseph Convalescent Hospital, Inc.*, 106 Cal. App. 3d 542, 165 Cal. Rptr. 198 (1st Dist. 1980).
- 16 N.Y.—*Lee TT. v. Dowling*, 87 N.Y.2d 699, 642 N.Y.S.2d 181, 664 N.E.2d 1243 (1996).

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16C C.J.S. Constitutional Law § 1892

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1892. Liberty to contract

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873, 4255, 4256

Freedom to contract is both a liberty and a property right which is protected against arbitrary or unreasonable restraint, but it is not absolute.

The right to contract, with some exceptions, is a liberty which falls within the protection of the Due Process Clauses of the Fifth and Fourteenth Amendment.¹ The right to contract is both a liberty and a property right within the protection of the Fourteenth Amendment to the Federal Constitution.² The liberty of contract which is guaranteed by due process of law clauses in constitutional provisions is freedom from arbitrary or unreasonable restraint.³

Freedom of contract is not an absolute, but a qualified, right and is, therefore, subject to reasonable restraint, under the police power of the State, in the interest of the public welfare,⁴ such as the restraint involved or imposed by the regulation of commerce,⁵ and the currency.⁶ However, the enforcement of a contractual clause which is contrary to public policy is not per se a violation of due process.⁷ Nevertheless, freedom is the general rule and restraint or abridgment is an exception which can be justified only by the existence of exceptional circumstances.⁸ The appropriate test of legislation alleged to violate a contracting

entity's rights under the Fifth and Fourteenth Amendments by interfering with the freedom of contract is whether the contested legislation bears a rational relationship to a legitimate state interest.⁹

The Due Process Clause does not constitutionalize contract law¹⁰ or codify all common-law contract principles.¹¹ The Fifth Amendment does not prohibit legislation which affects remedies or property interests granted by private contract if the statutory provisions are consonant with what is fair, reasonable, and equitable.¹² Also, the bar against states' enacting laws that impair contractual obligations has never been incorporated into the sphere of Fourteenth Amendment protection.¹³

A statute which does not directly interfere with the right to contract does not deprive a person of the liberty of contract, in the constitutional sense, merely because it creates a condition of affairs which renders the making of a related contract, lawful in itself, ineffective and, hence, indirectly operates as a deterrent.¹⁴

Extraterritorial transactions.

The Due Process Clause of the Fourteenth Amendment denies to any state the power to restrict or control the obligation of contracts executed and to be performed outside the state notwithstanding one of the contracting parties and the subject matter of the contract may be within the state.¹⁵ However, where a contract is entered into within the state, although it is to be performed elsewhere, its terms, obligations, and sanctions are subject in some measure to the legislative control of the State.¹⁶ The mere fact that state action in its regulation of contracts may have repercussions beyond state lines is of no judicial significance as long as the action is not within the domain which the Constitution forbids.¹⁷

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Footnotes

- 1 U.S.—*Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 (1936).
Ill.—*Reed v. Farmers Ins. Group*, 188 Ill. 2d 168, 242 Ill. Dec. 97, 720 N.E.2d 1052 (1999).
All contracts which may be proper, necessary, and essential
Fourteenth Amendment liberty includes the right to enter into all contracts which may be proper, necessary, and essential to a citizen's needs.
U.S.—*EJS Properties, LLC v. City of Toledo*, 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013).
- 2 U.S.—*Pyeatte v. Board of Regents of University of Okla.*, 102 F. Supp. 407 (W.D. Okla. 1951), judgment aff'd, 342 U.S. 936, 72 S. Ct. 567, 96 L. Ed. 696 (1952).
Wyo.—*Pirie v. Kamps*, 68 Wyo. 83, 229 P.2d 927, 26 A.L.R.2d 647 (1951).
- 3 U.S.—*Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co.*, 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931).
- 4 U.S.—*Breard v. City of Alexandria, La.*, 341 U.S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 62 Ohio L. Abs. 210, 35 A.L.R.2d 335 (1951) (abrogated on other grounds by, *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980)).
Reasonable exercise of acknowledged state power
Legislation otherwise within the scope of acknowledged state power, not unreasonably or arbitrarily exercised, cannot be condemned because it curtails the power of an individual to contract.
U.S.—*Alaska Packers Ass'n v. Industrial Acc. Com'n*, 294 U.S. 532, 55 S. Ct. 518, 79 L. Ed. 1044 (1935);
Hardware Dealers' Mut. Fire Ins. Co. of Wis. v. Glidden Co., 284 U.S. 151, 52 S. Ct. 69, 76 L. Ed. 214 (1931).
- 5 U.S.—*Carleton Screw Products Co. v. Fleming*, 126 F.2d 537 (C.C.A. 8th Cir. 1942).
Neb.—*Hanson v. Union Pac. R. Co.*, 160 Neb. 669, 71 N.W.2d 526 (1955), judgment rev'd on other grounds, 351 U.S. 225, 76 S. Ct. 714, 100 L. Ed. 1112 (1956).
- 6 U.S.—*Guaranty Trust Co. of New York v. Henwood*, 307 U.S. 247, 59 S. Ct. 847, 83 L. Ed. 1266 (1939).

- 7 Ill.—*Kubisen v. Chicago Health Clubs*, 69 Ill. App. 3d 463, 26 Ill. Dec. 420, 388 N.E.2d 44 (1st Dist. 1979).
- 8 U.S.—*Charles Wolff Packing Co. v. Court of Industrial Relations of State of Kansas*, 262 U.S. 522, 43 S. Ct. 630, 67 L. Ed. 1103, 27 A.L.R. 1280 (1923).
- 9 Kan.—*Board of Educ. of Unified School Dist. No. 443, Ford County v. Kansas State Bd. of Educ.*, 266 Kan. 75, 966 P.2d 68, 130 Ed. Law Rep. 308 (1998).
- 10 U.S.—*Schlake v. Beatrice Production Credit Ass'n*, 596 F.2d 278 (8th Cir. 1979).
- 11 U.S.—*Northern Penna. Legal Services, Inc. v. Lackawanna County*, 513 F. Supp. 678 (M.D. Pa. 1981).
- 12 U.S.—*In re Pommerer*, 10 B.R. 935 (Bankr. D. Minn. 1981); *In re Paden*, 10 B.R. 206 (Bankr. E.D. Pa. 1981).
- 13 U.S.—*Poirier v. Hodges*, 445 F. Supp. 838 (M.D. Fla. 1978).
- 14 U.S.—*Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 (1936).
- 15 Ga.—*Cooper Co. of Gainesville v. State*, 187 Ga. 497, 1 S.E.2d 436 (1939).
- Ind.—*Department of Financial Institutions v. General Finance Corp.*, 227 Ind. 373, 86 N.E.2d 444, 10 A.L.R.2d 436 (1949).
- Tex.—*State Mut. Life Assur. Co. of America v. State*, 345 S.W.2d 325 (Tex. Civ. App. Austin 1961), writ granted, (Oct. 11, 1961) and judgment rev'd on other grounds, 163 Tex. 240, 353 S.W.2d 412 (1962).
- 16 N.J.—*Steinmetz v. Snead & Co.*, 123 N.J.L. 497, 9 A.2d 801 (N.J. Sup. Ct. 1939), judgment aff'd, 124 N.J.L. 450, 12 A.2d 678 (N.J. Ct. Err. & App. 1940), judgment aff'd, 311 U.S. 605, 61 S. Ct. 12, 85 L. Ed. 383 (1940).
- 17 U.S.—*Osborn v. Ozlin*, 310 U.S. 53, 60 S. Ct. 758, 84 L. Ed. 1074 (1940).

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16C C.J.S. Constitutional Law § 1893

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

B. Life or Liberty

§ 1893. Liberty to contract—Government contracts

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3873, 4255, 4256

Subject to the requirements of due process, the government, like private individuals and businesses, has the power to determine those with whom it will deal and to fix the terms and conditions upon which it will make needed purchases.

Subject to the requirements of due process, the government, like private individuals and businesses, has the power to determine those with whom it will deal and to fix the terms and conditions upon which it will make needed purchases.¹ The Contract Clause of the Federal Constitution which provides that no state shall pass any law impairing the obligation of contracts operates against the federal government through the Due Process Clause of the Fifth Amendment.² The Due Process Clause of the Constitution provides essentially the same restraint against federal impairment of the obligation of contracts as the Contract Clause limits the states' powers to interfere with the obligation of contracts.³

There is no right protected by due process to a government contract⁴ but only a right to an equal opportunity to contract.⁵ A constitutional violation is not committed when a governmental agency breaches a contract it has entered into in the commercial world.⁶ The Due Process Clause does not codify all common-law contract principles, so, a plaintiff cannot obtain a federal forum merely because the state subdivision may have breached an agreement, but rather, the plaintiff must show that the deprivation was arbitrary, capricious, or without a rational basis.⁷

In order for specifications of a government contract not to deny a bidder his or her rights under the Due Process Clause, the specifications must not be ambiguous and contradictory.⁸ Where a rational basis exists for a government's policy with respect to bidding for the government's business, such policy is not an unconstitutional denial of due process.⁹ Where public contract law creates a right in the lowest responsible bidder to receive the advertised contract, if any is let as a consequence of the biddings, such right is entitled to procedural due process protection.¹⁰

Due process requires that a government contractor be given notice and an opportunity for a hearing appropriate to the nature of the case,¹¹ and due process is satisfied where a government agency affords a hearing to one with whom it has contracted upon such person's claim under the contract.¹² However, depending on the circumstances of the case, notice, and hearing are not always required¹³ as where there is no infringement of a protected liberty interest.¹⁴ A contractor's liberty interest is not implicated by the termination of a government contract,¹⁵ and the Due Process Clause does not require a government agency to conduct a hearing whenever it fails to renew a contract with a private business even where that contract constitutes the sole business of the firm.¹⁶ A conclusory allegation that the purportedly unjustified cancellation of a company's contract with a government agency extinguished prospects for employment of the company and its principals does not establish a liberty interest protected by due process, particularly in the absence of any allegation that company has bid on any new contract since the termination underlying the claim.¹⁷

Debarment or suspension.

Debarment from government contract bidding constitutes a deprivation of a property or a liberty interest protected by due process.¹⁸ Due process requires that before a government contractor may be blacklisted, whether by debarment or suspension, the contractor must be afforded specific procedural safeguards, including notification of the charges against him or her, opportunity to rebut those charges, and under most circumstances, a hearing.¹⁹ However, a contractor who is listed as ineligible for award of public contracts has no constitutionally protected property right to bid for, and be awarded, a public works contract so as to require due process protections on debarment.²⁰

Stigmatizing allegation.

A government contractor can establish that an agency deprived it of its liberty interest protected under the Due Process Clause of the Fifth Amendment if it proves that an agency has made a stigmatizing allegation, the allegation has been disseminated or publicized, and the allegation has resulted in the loss of a tangible interest.²¹

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Footnotes

- 1 U.S.—*J. H. Rutter Rex Mfg. Co., Inc. v. U.S.*, 534 F. Supp. 331 (E.D. La. 1982), judgment aff'd, 706 F.2d 702 (5th Cir. 1983).
- 2 U.S.—*Lynch v. U.S.*, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934).
As to constitutional prohibitions against impairing obligation of contracts, see §§ 506 to 644.
- 3 U.S.—*Northwestern Nat. Life Ins. Co. v. Jordan*, 447 F. Supp. 856 (D. Nev. 1978).
- 4 Iowa—*Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444 (Iowa 2013).
- 5 U.S.—*Alaska Movers Ass'n v. Brown*, 445 F. Supp. 363 (D.D.C. 1978).
- 6 U.S.—*Schlake v. Beatrice Production Credit Ass'n*, 596 F.2d 278 (8th Cir. 1979).
- 7 U.S.—*Northern Penna. Legal Services, Inc. v. Lackawanna County*, 513 F. Supp. 678 (M.D. Pa. 1981).

As to liberty to contract, see § 1892.

8 U.S.—*Three Rivers Cablevision, Inc. v. City of Pittsburgh*, 502 F. Supp. 1118 (W.D. Pa. 1980).

9 U.S.—*Image Carrier Corp. v. Beame*, 567 F.2d 1197 (2d Cir. 1977).

10 La.—*Haughton Elevator Division v. State, Through Division of Administration*, 367 So. 2d 1161 (La. 1979).

11 U.S.—*U.S. v. Bradt*, 291 F. Supp. 1022 (C.D. Cal. 1968).

Termination of contract

Due process required that a property management corporation be given notice and opportunity for a hearing appropriate to the nature of the case before termination by the Department of Housing and Urban Development of its property management contract for a cooperative housing project could become effective.

U.S.—*T. A. Moynahan Properties, Inc. v. Lancaster Village Co-op., Inc.*, 496 F.2d 1114 (7th Cir. 1974).

12 Fla.—*Biltmore Const. Co. v. Florida Dept. of General Services*, 363 So. 2d 851 (Fla. 1st DCA 1978).

13 U.S.—*N. Fiorito Co. v. U. S.*, 189 Ct. Cl. 215, 416 F.2d 1284 (1969).

Cal.—*Educational & Recreational Services, Inc. v. Pasadena Unified Sch. Dist.*, 65 Cal. App. 3d 775, 135 Cal. Rptr. 594 (2d Dist. 1977).

Contract renewal

U.S.—*Crown Zellerbach Corp. v. Marshall*, 441 F. Supp. 1110 (E.D. La. 1977).

14 U.S.—*Coyne-Delany Co., Inc. v. Capital Development Bd. of State of Ill.*, 616 F.2d 341 (7th Cir. 1980).

15 N.Y.—*Amato v. New York City Dept. of Parks and Recreation*, 110 A.D.3d 439, 973 N.Y.S.2d 29 (1st Dep't 2013).

16 U.S.—*Windham v. City of New York*, 405 F. Supp. 872 (S.D. N.Y. 1976).

17 U.S.—*Behavioral Healthcare Partners, Inc. v. Gonzalez-Rivera*, 392 F. Supp. 2d 191 (D.P.R. 2005).

18 U.S.—*ABA, Inc. v. District of Columbia*, 40 F. Supp. 3d 153 (D.D.C. 2014); *MG Altus Apache Company v. United States*, 111 Fed. Cl. 425 (2013).

Property interests, generally, see §§ 1894 to 1908.

19 U.S.—*Transco Sec., Inc. of Ohio v. Freeman*, 639 F.2d 318 (6th Cir. 1981); *Art-Metal-USA, Inc. v. Solomon*, 473 F. Supp. 1 (D.D.C. 1978).

Affiliates

U.S.—*Agility Defense & Government Services v. U.S. Dept. of Defense*, 739 F.3d 586 (11th Cir. 2013).

20 N.J.—*Department of Labor and Industry, Division of Workplace Standards v. Union Paving & Const. Co., Inc.*, 168 N.J. Super. 19, 401 A.2d 698 (App. Div. 1979).

21 U.S.—*Agility Defense & Government Services v. U.S. Dept. of Defense*, 739 F.3d 586 (11th Cir. 2013).

Stigmatizing actions, generally, see § 1891.

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16C C.J.S. Constitutional Law VIII XX C Refs.

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

[Topic Summary](#) | [Correlation Table](#)

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16C C.J.S. Constitutional Law § 1894

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

1. In General

§ 1894. Scope of due process protection, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070

The guaranties of procedural due process apply only to governmental decisions which deprive individuals of property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments. Protected property interests are not created by the federal or state constitutions, but by independent sources, such as state law, which may include statutes, regulations, or rules, contracts, or mutually explicit understandings.

The guaranties of procedural due process apply only to governmental decisions which deprive individuals of property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendments and to determine whether due process requirements apply in the first place, the courts must look not to the weight but to the nature of the interest at stake.¹ The first inquiry in a procedural due process analysis is whether a protected property interest actually exists or is involved.² Thus, the usual due process analysis involves determining whether constitutionally protected property interests are at stake and, if so, then assessing the appropriate measure of procedural protection due.³

Protected property interests are not created by the federal or state constitutions⁴ but, rather, are created, and their dimensions defined, by existing rules or understandings that stem from an independent source such as state law,⁵ which may include statutes,

regulations or rules, contracts, or mutually explicit understandings.⁶ Whether a property interest protected by the due process clause exists can be determined only by an examination of the particular statute, rule, or ordinance in question.⁷

The due process procedural protection of property is a safeguard of security of interests that a person already has acquired in specific benefits,⁸ and although the primary source of property rights is state law, the State may not magically declare an interest to be nonproperty after the fact for due process purposes if a long standing pattern has established an individual's entitlement to a particular governmental benefit.⁹

Whether one has a protected property interest, as required for a due process claim, is determined as a matter of law.¹⁰ Although state law creates the property interest, it is federal constitutional law which determines whether that property interest rises to level of a constitutionally protected interest under the Due Process Clause.¹¹

Even if a statute includes substantive criteria, a party whose asserted property interest is not related to the substantive criteria but rather is grounded solely in the procedures set forth in the statute does not have a constitutionally cognizable property interest.¹² A statute or ordinance providing procedural guarantees does not create a constitutionally protected property interest unless it sets forth substantive criteria that limit the discretion of the decision-making body.¹³

CUMULATIVE SUPPLEMENT

Cases:

Property interests protected by the Due Process Clause arise from sources of law other than the Constitution, sometimes state law, sometimes contracts. [U.S. Const. Amend. 14](#). [Hudson v. City of Highland Park, Michigan](#), 943 F.3d 792 (6th Cir. 2019).

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Footnotes

- 1 U.S.—[Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Transformation
Once the state transforms a privilege into a property interest, no matter what its weight, due process attaches. U.S.—[Dallam v. Cumberland Valley School Dist.](#), 391 F. Supp. 358 (M.D. Pa. 1975).
- 2 U.S.—[Rebirth Christian Academy Daycare, Inc. v. Minott](#), 994 F. Supp. 2d 925 (S.D. Ind. 2014).
Iowa—[Bowers v. Polk County Bd. of Supervisors](#), 638 N.W.2d 682 (Iowa 2002).
La.—[State v. Weaver](#), 805 So. 2d 166 (La. 2002).
Threshold question
U.S.—[Booker-El v. Superintendent, Indiana State Prison](#), 668 F.3d 896 (7th Cir. 2012).
W. Va.—[Kessel v. Monongalia County General Hosp. Co.](#), 215 W. Va. 609, 600 S.E.2d 321 (2004).
- 3 Idaho—[Smith v. Meridian Joint School Dist. No. 2](#), 128 Idaho 714, 918 P.2d 583, 110 Ed. Law Rep. 862 (1996).
N.D.—[Morrell v. North Dakota Dept. of Transp.](#), 1999 ND 140, 598 N.W.2d 111 (N.D. 1999).
- 4 U.S.—[Goss v. Lopez](#), 419 U.S. 565, 95 S. Ct. 729, 42 L. Ed. 2d 725 (1975).
Fourteenth Amendment not an independent source
The Fourteenth Amendment Due Process Clause is not an independent source of property rights.
W. Va.—[State ex rel. West Virginia Regional Jail and Correctional Facility Authority v. West Virginia Inv. Management Bd.](#), 203 W. Va. 413, 508 S.E.2d 130 (1998).

- 5 U.S.—*Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L. Ed. 2d 494, 23 Ed. Law Rep. 473 (1985); *Velez v. Levy*, 401 F.3d 75, 196 Ed. Law Rep. 76 (2d Cir. 2005); *McDonald v. Wise*, 769 F.3d 1202 (10th Cir. 2014).
State law applied to determine whether protected property interest exists
U.S.—*Oyarzo v. Tuolumne Fire Dist.*, 955 F. Supp. 2d 1038 (E.D. Cal. 2013).
Applicability of state law
State law may bear upon a claim under the Due Process Clause when property interests protected by the Fourteenth Amendment are created by state law.
U.S.—*Davis v. Scherer*, 468 U.S. 183, 104 S. Ct. 3012, 82 L. Ed. 2d 139 (1984).
Necessity of basis in state law
A property interest protected by the Due Process Clause must rest on a right or status conferred by state law.
U.S.—*URI Student Senate v. Town Of Narragansett*, 631 F.3d 1 (1st Cir. 2011).
- 6 U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Rules or mutually explicit understandings
While the typical claim of entitlement to a particular benefit so as to require due process protection is based upon specific statutory or contractual provisions, it need not be; rather, a person's interest in a benefit is a "property interest" for due process purposes if there are rules or mutually explicit understandings that support the person's claim of entitlement to the benefit and that he or she may invoke at a hearing.
Mont.—*ISC Distributors, Inc. v. Trevor*, 273 Mont. 185, 903 P.2d 170 (1995).
Implied contracts or promises
(1) Agreements in nature of implied contracts may serve to supplement and complement legislative and judicial pronouncements.
U.S.—*Hermes v. Hein*, 511 F. Supp. 123 (N.D. Ill. 1980).
(2) Implied contract aspect of "mutually explicit understandings" has far more useful place in determining protected property interests than in determining liberty interests protected by Due Process Clause of Fourteenth Amendment.
U.S.—*Jago v. Van Curen*, 454 U.S. 14, 102 S. Ct. 31, 70 L. Ed. 2d 13 (1981).
- 7 Idaho—*Bradbury v. Idaho Judicial Council*, 136 Idaho 63, 28 P.3d 1006 (2001).
- 8 U.S.—*Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972); *Top Flight Entertainment, Ltd. v. Schuette*, 729 F.3d 623 (6th Cir. 2013); *Ribeau v. Katt*, 681 F.3d 1190, 280 Ed. Law Rep. 637 (10th Cir. 2012).
La.—*Denham Springs Economic Development Dist. v. All Taxpayers, Property Owners and Citizens of Denham Springs Economic Development Dist.*, 945 So. 2d 665 (La. 2006).
Miss.—*Suddith v. University of Southern Mississippi*, 977 So. 2d 1158, 231 Ed. Law Rep. 471 (Miss. Ct. App. 2007).
Tenn.—*City of Cookeville ex rel. Cookeville Regional Med. Ctr. v. Humphrey*, 126 S.W.3d 897 (Tenn. 2004).
- 9 U.S.—*Winkler v. DeKalb County*, 648 F.2d 411 (5th Cir. 1981).
Mass.—*Allen v. Board of Assessors of Granby*, 387 Mass. 117, 439 N.E.2d 231 (1982).
Right declared not vested
A statute cannot withdraw the protection of the Due Process Clause simply by a declaration that no vested right shall arise.
Ark.—*Commissioner of Labor v. Purnell*, 267 Ark. 593, 593 S.W.2d 157 (1980).
Mont.—*Kiely Const., L.L.C. v. City of Red Lodge*, 2002 MT 241, 312 Mont. 52, 57 P.3d 836 (2002).
- 11 Miss.—*University of Mississippi Medical Center v. Hughes*, 765 So. 2d 528 (Miss. 2000).
- 12 Conn.—*Giaimo v. City of New Haven*, 257 Conn. 481, 778 A.2d 33 (2001).
- 13 Conn.—*Giaimo v. City of New Haven*, 257 Conn. 481, 778 A.2d 33 (2001).

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16C C.J.S. Constitutional Law § 1895

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

1. In General

§ 1895. Legitimate claim of entitlement; effect of decision maker's discretion

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070, 4262

An interest in property which is protected by due process arises only when there is a legitimate claim of entitlement to a state-created benefit; a person must have more than an abstract need or desire for it, or a unilateral expectation of it.

A protected "property" interest under the Due Process Clause includes state-created benefits to which a person has become entitled.¹ However, an interest in property which is protected by due process arises only when there is a legitimate claim of entitlement² as created and defined by independent sources,³ and a person clearly must have more than an abstract need or desire for it, and the person must have more than a unilateral expectation of it.⁴ If a benefit is a matter of statutory entitlement for persons qualified to receive them, the government has created a due process property interest in that benefit.⁵

Governmental decision maker's discretion.

A statute will create an entitlement to a governmental benefit, and therefore, create a property interest for due process purposes, if the statute either sets out conditions under which the benefit must be granted or sets out the only conditions under which the

benefit may be denied.⁶ A statute does not create a property right for due process purposes if it allows the decision-making body discretion to add an additional criterion or to define its own criteria.⁷ No clear and unambiguous statement of legislative intent is required, for due process purposes, for the creation of a protected property interest in a statutory benefit, and all that is required is that the statute place substantive restrictions on the discretion of the government body responsible for administering the benefit.⁸ When analyzing whether a plaintiff presents a legitimate claim of entitlement to a governmental benefit, so that the plaintiff has a property interest for due process purposes, the court focuses on the degree of discretion given the governmental decision maker and not on the probability of the decision's favorable outcome.⁹ The more circumscribed is the government's discretion under substantive state or federal law to withhold a benefit, the more likely that benefit constitutes "property."¹⁰ For purposes of determining whether a property interest protected by procedural due process exists, a discretionary benefit does not cease to be discretionary depending on whether the discretion is exercised free of corruption.¹¹

Permits.

A plaintiff's due process property right in a permit or license turns on the amount of discretion granted to the issuing authority under the relevant statutes.¹² An applicant for a permit does not have a property interest in that permit if there is broad discretion to withhold the permit,¹³ and when the provider has broad discretion, the applicant cannot have a reasonable claim of expectation or entitlement to the permit.¹⁴ While the existence of discretion in a governmental actor does not alone defeat the existence of a property interest in a permit applicant, that discretion must be so narrowly circumscribed that approval is virtually assured.¹⁵ In order to establish a protectable property interest in a building permit, a developer has to show more than a mere expectation or hope to retain the permit and continue improvements as the developer has to show that pursuant to state or local law, it has a legitimate claim of entitlement.¹⁶

CUMULATIVE SUPPLEMENT

Cases:

A party cannot possess a property interest in the receipt of a state benefit, as element of a Fourteenth Amendment Due Process Clause claim, when the state's decision to award or withhold the benefit is wholly discretionary. [U.S. Const. Amend. 14](#). [West v. Kentucky Horse Racing Commission](#), 972 F.3d 881 (6th Cir. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 Or.—[Koskela v. Willamette Industries, Inc.](#), 331 Or. 362, 15 P.3d 548 (2000).
- 2 U.S.—[Logan v. Zimmerman Brush Co.](#), 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982); [Khan v. Bland](#), 630 F.3d 519 (7th Cir. 2010); [Narotzky v. Natrona County Memorial Hosp. Bd. of Trustees](#), 610 F.3d 558 (10th Cir. 2010).
- Haw.—[In re Robert's Tours & Transp., Inc.](#), 104 Haw. 98, 85 P.3d 623 (2004).
- Ky.—[Faust v. Com.](#), 142 S.W.3d 89 (Ky. 2004).
- La.—[Driscoll v. Stucker](#), 893 So. 2d 32 (La. 2005).
- Ohio—[Cleveland Constr., Inc. v. Cincinnati](#), 118 Ohio St. 3d 283, 2008-Ohio-2337, 888 N.E.2d 1068 (2008).

Determination

When a plaintiff looks to state law to provide a basis for a property interest, for purposes of a due process claim, a reasonable expectation of entitlement is determined largely by the language of the statute and the extent to which the entitlement is couched in mandatory terms.

Mont.—[Kiely Const., L.L.C. v. City of Red Lodge](#), 2002 MT 241, 312 Mont. 52, 57 P.3d 836 (2002).

Apparent authority

Apparent authority cannot serve as a means of holding a state, county, or municipal sovereign to a contract; thus, if state actor did not possess actual authority to make a commitment, person relying on that actor's statements has no legitimate claim of entitlement as necessary to establish a property interest for purposes of due process claim.

W. Va.—[Hutchison v. City of Huntington](#), 198 W. Va. 139, 479 S.E.2d 649 (1996).

License

A law which provides that license can be suspended or revoked only upon proof of certain contingencies has engendered a clear expectation of continued enjoyment of the license absent proof of culpable conduct, and thereby, has given the license holder a legitimate claim of entitlement, supporting a finding of a property interest.

Ga.—[Goldrush II v. City of Marietta](#), 267 Ga. 683, 482 S.E.2d 347 (1997).

U.S.—[Logan v. Zimmerman Brush Co.](#), 455 U.S. 422, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982).

U.S.—[Town of Castle Rock, Colo. v. Gonzales](#), 545 U.S. 748, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005).

Haw.—[In re Robert's Tours & Transp., Inc.](#), 104 Haw. 98, 85 P.3d 623 (2004).

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Ohio.—[Cleveland Constr., Inc. v. Cincinnati](#), 118 Ohio St. 3d 283, 2008-Ohio-2337, 888 N.E.2d 1068 (2008).

Utah.—[Petersen v. Riverton City](#), 2010 UT 58, 243 P.3d 1261 (Utah 2010).

Me.—[Munjoy Sporting & Athletic Club v. Dow](#), 2000 ME 141, 755 A.2d 531 (Me. 2000).

Mont.—[Kiely Const., L.L.C. v. City of Red Lodge](#), 2002 MT 241, 312 Mont. 52, 57 P.3d 836 (2002).

U.S.—[Doyle v. City of Medford](#), 606 F.3d 667 (9th Cir. 2010).

Civil rights action

A public official's discretion may prevent the creation of a property right sufficient to support a claim that due process was denied in violation of 42 U.S.C.A. § 1983.

Mont.—[ISC Distributors, Inc. v. Trevor](#), 273 Mont. 185, 903 P.2d 170 (1995).

Conn.—[Giaimo v. City of New Haven](#), 257 Conn. 481, 778 A.2d 33 (2001).

Mont.—[Kiely Const., L.L.C. v. City of Red Lodge](#), 2002 MT 241, 312 Mont. 52, 57 P.3d 836 (2002).

U.S.—[Clukey v. Town of Camden](#), 717 F.3d 52 (1st Cir. 2013).

U.S.—[EJS Properties, LLC v. City of Toledo](#), 698 F.3d 845 (6th Cir. 2012), cert. denied, 133 S. Ct. 1635, 185 L. Ed. 2d 617 (2013).

Minn.—[Rochester City Lines, Co. v. City of Rochester](#), 846 N.W.2d 444 (Minn. Ct. App. 2014), review granted, (June 17, 2014).

U.S.—[Caesars Massachusetts Management Co., LLC v. Crosby](#), 778 F.3d 327 (1st Cir. 2015).

Me.—[Gonzales v. Commissioner, Dept. of Public Safety](#), 665 A.2d 681 (Me. 1995).

Me.—[Gonzales v. Commissioner, Dept. of Public Safety](#), 665 A.2d 681 (Me. 1995).

N.Y.—[Bower Associates v. Town of Pleasant Valley](#), 2 N.Y.3d 617, 781 N.Y.S.2d 240, 814 N.E.2d 410 (2004).

N.Y.—[Town of Orangetown v. Magee](#), 88 N.Y.2d 41, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996).

16C C.J.S. Constitutional Law § 1896

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

1. In General

§ 1896. Type or character of property within protection of guaranty

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070

As used in the context of the due process guaranty, the term "property" embraces every kind of property or right over which a person may have exclusive control or dominion and includes all character of vested rights.

A property interest protected by the Due Process Clause can take a number of forms and is not uniform.¹ The term "property" embraces all valuable interests which a person may possess outside of life and liberty, and it is not confined to mere tangible property but extends to every species of vested right.² However, while the term "property" as used in the due process guaranty is broadly interpreted,³ the range is not infinite.⁴ The hallmark example of a constitutionally protected property interest is an entitlement that is grounded in state law and cannot be removed except "for cause."⁵

Protectable property interests under the due process guaranty extend beyond ownership of real property, chattels, or money,⁶ and they extend to any significant property interest,⁷ including statutory entitlements.⁸ A "property interest" under the Due Process Clause includes not only traditional notions of real and personal property but also extends to those benefits to which an individual may be deemed to have a legitimate claim of entitlement under existing rules or understandings.⁹ They include not

only the actual physical possession of property but also the right to use the same¹⁰ as well as the right to make any legitimate use or disposal of the thing owned,¹¹ such as to sell or transfer it.¹²

Corporate, as well as individual property, is shielded by the due process guaranty.¹³

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Footnotes

- 1 Md.—[Reese v. Department of Health and Mental Hygiene](#), 177 Md. App. 102, 934 A.2d 1009 (2007).
- 2 Utah—[Miller v. USAA Cas. Ins. Co.](#), 2002 UT 6, 44 P.3d 663 (Utah 2002).
Vested rights included
Tex.—[Pope v. City of Dallas](#), 636 S.W.2d 244 (Tex. App. El Paso 1982).
Wash.—[Senior Citizens League v. Department of Social Sec. of Wash.](#), 38 Wash. 2d 142, 228 P.2d 478 (1951).
- 3 Utah—[Miller v. USAA Cas. Ins. Co.](#), 2002 UT 6, 44 P.3d 663 (Utah 2002).
- 4 Haw.—[International Broth. of Painters and Allied Trades, Drywall Tapers, Finishers & Allied Workers Local Union 1944, AFL CIO v. Befitel](#), 104 Haw. 275, 88 P.3d 647 (2004).
Vt.—[Hegarty v. Addison County Humane Soc.](#), 176 Vt. 405, 2004 VT 33, 848 A.2d 1139 (2004).
- 5 U.S.—[Barnes v. Zaccari](#), 669 F.3d 1295, 277 Ed. Law Rep. 117 (11th Cir. 2012).
Cal.—[Anchor Pacifica Management Co. v. Green](#), 205 Cal. App. 4th 232, 140 Cal. Rptr. 3d 524 (2d Dist. 2012).
Conn.—[Packer v. Board of Educ. of Town of Thomaston](#), 246 Conn. 89, 717 A.2d 117, 129 Ed. Law Rep. 400 (1998).
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N.H.—[Appeal of Office of Consumer Advocate](#), 148 N.H. 134, 803 A.2d 1054 (2002).
Pa.—[In re Jacobs](#), 2007 PA Super 341, 936 A.2d 1156 (2007).
- 6 U.S.—[Board of Regents of State Colleges v. Roth](#), 408 U.S. 564, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972).
Wis.—[Milwaukee Dist. Council 48 v. Milwaukee County](#), 2001 WI 65, 244 Wis. 2d 333, 627 N.W.2d 866 (2001).
Money as property interest under Due Process Clause
U.S.—[Sansotta v. Town of Nags Head](#), 724 F.3d 533 (4th Cir. 2013); [Reyes v. North Texas Tollway Authority](#), 830 F. Supp. 2d 194 (N.D. Tex. 2011) (under Texas law).
Cal.—[American Corporate Security, Inc. v. Su](#), 220 Cal. App. 4th 38, 162 Cal. Rptr. 3d 563 (3d Dist. 2013).
- 7 U.S.—[Fuentes v. Shevin](#), 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- 8 U.S.—[Fuentes v. Shevin](#), 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- 9 W. Va.—[Wampler Foods, Inc. v. Workers' Compensation Div.](#), 216 W. Va. 129, 602 S.E.2d 805 (2004).
- 10 W. Va.—[Stover v. Milam](#), 210 W. Va. 336, 557 S.E.2d 390 (2001).
Use and enjoyment of land
Wash.—[Mission Springs, Inc. v. City of Spokane](#), 134 Wash. 2d 947, 954 P.2d 250 (1998).
Ownership rights of immovable property
La.—[Allain v. Martco Partnership](#), 851 So. 2d 974 (La. 2003).
Firearms
Md.—[Serio v. Baltimore County](#), 384 Md. 373, 863 A.2d 952 (2004).
- 11 U.S.—[Sterling v. Constantin](#), 287 U.S. 378, 53 S. Ct. 190, 77 L. Ed. 375 (1932); [State of Washington ex rel. Seattle Title Trust Co. v. Roberge](#), 278 U.S. 116, 49 S. Ct. 50, 73 L. Ed. 210, 86 A.L.R. 654 (1928).
- 12 Cal.—[Hart v. City of Beverly Hills](#), 11 Cal. 2d 343, 79 P.2d 1080 (1938).
Ind.—[Pennington v. Stewart](#), 212 Ind. 553, 10 N.E.2d 619 (1937).
Mich.—[Rassner v. Federal Collateral Soc.](#), 299 Mich. 206, 300 N.W. 45 (1941).
Right to fix sale price
The right of a property owner to fix the price at which he or she will sell is an inherent attribute of the property itself and, as such, is within the protection of due process.
U.S.—[Schwegmann Bros. Giant Super Markets v. Eli Lilly & Co.](#), 205 F.2d 788 (5th Cir. 1953).

13

U.S.—[Marshall v. Kleppe](#), 637 F.2d 1217 (9th Cir. 1980).

Fla.—[Aztec Motel, Inc. v. State ex rel. Faircloth](#), 251 So. 2d 849 (Fla. 1971).

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16C C.J.S. Constitutional Law § 1897

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property


C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1897. Property protected, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [3865](#), [3867](#), [3869](#), [3874](#), [3912](#), [3952](#), [4070](#) to [4074](#), [4080](#), [4084](#), [4085](#), [4088](#), [4092](#), [4093](#), [4101](#), [4102](#), [4104](#), [4105\(1\)](#), [4106](#) to [4110](#), [4112](#), [4115](#), [4117](#) to [4120](#), [4123](#) to [4127](#), [4129](#), [4130](#), [4156](#), [4186](#), [4187](#), [4205](#), [4207](#), [4208](#), [4224](#), [4226](#), [4255](#), [4256](#), [4262](#), [4272](#), [4273\(1\)](#), [4285](#), [4286](#), [4289](#), [4292](#), [4301](#), [4303](#), [4304](#), [4326](#), [4350](#), [4355](#), [4356](#), [4369](#), [4370](#) to [4373](#), [4416](#), [4428](#), [4429](#), [4822](#)

The term "property" within the constitutional guaranty against the deprivation of property without due process has been held to include various items of property and various rights and interests.

The term "property" within the constitutional guaranty against the deprivation of property without due process has been held to include various items of property¹ and various rights and interests,² including contract rights,³ such as possessory interests in a chattel under a conditional sales contract,⁴ and a franchise.⁵ The term "property" also includes shares of a corporation⁶ and the vested right of a successor in a decedent's property.⁷

"Property" protected by due process additionally includes patent rights;⁸ trade secrets;⁹ the good will of a business;¹⁰ an interest in real property;¹¹ including rights to water, oil, minerals, and other substances of value which lie beneath the surface of real

property;¹² easements;¹³ mortgages and trust deeds for the security of obligations;¹⁴ statutory exemptions from execution;¹⁵ and rights acquired by judgment or decree.¹⁶ Liens are property rights entitled to constitutional protection,¹⁷ and a specific judicial lien upon real estate is a property interest protected by due process.¹⁸

The term "property" also includes rights under contracts with the government,¹⁹ such as under a war risk insurance policy.²⁰

Ownership, possession, and continued use of an automobile is considered a property interest within the protection of the Due Process Clause,²¹ and while the property interest in a dog is of an imperfect or qualified nature, the dog is nonetheless "property" for due process purposes.²²

A seller has a vested property right in the lawful possession of physical items of inventory that it owns.²³ Also, a homeless person's unabandoned²⁴ possessions are "property" for due process purposes.²⁵

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Footnotes

- 1 **Vessel and its accompanying mooring and live-aboard permits**
Haw.—[Brown v. Thompson](#), 91 Haw. 1, 979 P.2d 586 (1999), as amended, (July 13, 1999).
Livestock brand
Pursuant to statute, a livestock brand owner has a constitutionally protected property interest in a brand as long as the brand remains properly recorded.
Wyo.—[Tate v. Wyoming Livestock Bd.](#), 932 P.2d 746 (Wyo. 1997).
- 2 U.S.—[Brede v. Director for Dept. of Health for State of Hawaii](#), 616 F.2d 407 (9th Cir. 1980).
Ind.—[Anderson Federal Sav. and Loan Ass'n v. Guardianship of Davidson](#), 173 Ind. App. 549, 364 N.E.2d 781 (1977).
Minn.—[State v. Zay Zah](#), 259 N.W.2d 580 (Minn. 1977).
- 3 Miss.—[Harris v. Mississippi Valley State University](#), 873 So. 2d 970, 188 Ed. Law Rep. 562 (Miss. 2004).
Nev.—[Pressler v. City of Reno](#), 118 Nev. 506, 50 P.3d 1096 (2002).
Scope
Explicit contractual provisions or other agreements implied from the promisor's words or conduct in light of the surrounding circumstances may create due process property interests.
La.—[Driscoll v. Stucker](#), 893 So. 2d 32 (La. 2005).
- 4 U.S.—[Fuentes v. Shevin](#), 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972).
- 5 Vt.—[Petition of Vermont Elec. Power Producers, Inc.](#), 165 Vt. 282, 683 A.2d 716 (1996).
As to impairment of franchise, see § 1908.
- 6 Ohio—[Puritas Metal Products Inc. v. Cook](#), 2012-Ohio-2116, 972 N.E.2d 615 (Ohio Ct. App. 9th Dist. Lorain County 2012).
- 7 Ill.—[In re Estate of Jolliff](#), 199 Ill. 2d 510, 264 Ill. Dec. 642, 771 N.E.2d 346 (2002).
- 8 U.S.—[Johnson & Johnson, Inc. v. Wallace A. Erickson & Co.](#), 627 F.2d 57 (7th Cir. 1980).
As to patent right as property, generally, see C.J.S., Patents § 15.
- 9 U.S.—[St. Michael's Convalescent Hospital v. State of Cal.](#), 643 F.2d 1369 (9th Cir. 1981); [Zotos Intern., Inc. v. Kennedy](#), 460 F. Supp. 268 (D.D.C. 1978).
- 10 U.S.—[McDermott v. City of Seattle](#), 4 F. Supp. 855 (W.D. Wash. 1933).
- 11 U.S.—[Rau v. Cavanaugh](#), 500 F. Supp. 204 (D.S.D. 1980).
Haw.—[Klinger v. Kepano](#), 64 Haw. 4, 635 P.2d 938 (1981).
N.J.—[Montville Tp. v. Block](#) 69, Lot 10, 74 N.J. 1, 376 A.2d 909 (1977).
Junkyard

A junkyard owner had a "vested property right" in her junkyard, for procedural due process purposes, where it was a lawful use within the general use zoning district and only became a nonconforming use within the rezoned, rural residential district.

Alaska—*Balough v. Fairbanks North Star Borough*, 995 P.2d 245 (Alaska 2000).

12 Ill.—*Wilson v. Bishop*, 82 Ill. 2d 364, 45 Ill. Dec. 171, 412 N.E.2d 522 (1980).

Neb.—*Wheelock v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).

Tex.—*Railroad Commission v. Graford Oil Corp.*, 557 S.W.2d 946 (Tex. 1977).

13 S.D.—*Knodel v. Kassel Tp.*, 1998 SD 73, 581 N.W.2d 504 (S.D. 1998).

14 U.S.—*Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706, 77 L. Ed. 2d 180 (1983).

15 Mont.—*Dorwart v. Caraway*, 1998 MT 191, 290 Mont. 196, 966 P.2d 1121 (1998) (overruled on other grounds by, *Trustees of Indiana University v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663 (2003)).

16 U.S.—*Evans v. City of Chicago*, 689 F.2d 1286, 34 Fed. R. Serv. 2d 1635 (7th Cir. 1982).

N.J.—*Clarke v. Brown*, 101 N.J. Super. 404, 244 A.2d 514 (Law Div. 1968).

17 Ill.—*First of America Bank, Rockford, N.A. v. Netsch*, 166 Ill. 2d 165, 209 Ill. Dec. 657, 651 N.E.2d 1105, 54 A.L.R.5th 909 (1995).

Supplier not proper lienholder

Md.—*Redland Genstar, Inc. v. Mahase*, 155 Md. App. 72, 841 A.2d 413 (2004).

Interest in pawned jewelry property interest as security or lien interest in jewelry

Ark.—*Landers v. Jameson*, 355 Ark. 163, 132 S.W.3d 741, 16 A.L.R.6th 851 (2003).

18 U.S.—*Verba v. Ohio Cas. Ins. Co.*, 851 F.2d 811 (6th Cir. 1988).

19 U.S.—*Lynch v. U.S.*, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934).

Contract by statute

In determining whether a statute tenders a contract to a citizen, with respect to constitutional provisions against depriving citizens of vested rights without due process, it is of the first importance to examine the language of the statute; and if the statute provides for execution of a written contract on behalf of the State, or confirms the settlement of disputed rights and defines the terms of settlement, it creates an obligation binding on the State under such constitutional provisions.

U.S.—*Dodge v. Board of Education of City of Chicago*, 302 U.S. 74, 58 S. Ct. 98, 82 L. Ed. 57 (1937).

20 U.S.—*Lynch v. U.S.*, 292 U.S. 571, 54 S. Ct. 840, 78 L. Ed. 1434 (1934).

21 U.S.—*Sutton v. City of Milwaukee*, 672 F.2d 644 (7th Cir. 1982).

Colo.—*Patterson v. Cronin*, 650 P.2d 531 (Colo. 1982).

Ill.—*Valdez v. City of Ottawa*, 105 Ill. App. 3d 972, 61 Ill. Dec. 595, 434 N.E.2d 1192, 32 A.L.R.4th 718 (3d Dist. 1982).

22 S.D.—*City of Pierre v. Blackwell*, 2001 SD 127, 635 N.W.2d 581 (S.D. 2001).

23 Tex.—*Consumer Service Alliance of Texas, Inc. v. City of Dallas*, 433 S.W.3d 796 (Tex. App. Dallas 2014).

24 U.S.—*Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079 (E.D. Cal. 2012).

25 Cal.—*Lavan v. City of Los Angeles*, 797 F. Supp. 2d 1005 (C.D. Cal. 2011).

16C C.J.S. Constitutional Law § 1898

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property


C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1898. Property not within protection of guaranty, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

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The due process guaranty does not protect property rights or interests which are contingent and not vested, nor does it have reference to mere concessions or privileges which the public authorities may control and bestow or withhold, at will.

The due process clauses protect vested rights only and have no reference to mere concessions or privileges which the public authorities may control, and bestow or withhold, at will.¹ Due process does not apply to supposed property rights which a state court has found to be nonexistent,² or which are in fact nonexistent,³ or to rights or interests which are contingent,⁴ and which have not become vested and are open to doubt or controversy.⁵ A mere statement of governmental policy, without more, will not rise to the level of a constitutionally protected interest in property because neither an affirmative duty nor specific right is created.⁶

In accordance with the foregoing principles, various rights, interests, and other matters have been held not to constitute "property" within the meaning of that term as used in the constitutional guaranties against the deprivation of property without due process, such as hunting,⁷ interest in the selection of a trustee,⁸ public office or the right to be appointed to a public office,⁹ election as a village trustee,¹⁰ the rights of an unsuccessful bidder for government benefits,¹¹ a right to a favorable advisory opinion,¹² the right of a public administrator to administer certain estates,¹³ and the right of holders of improvement bonds to divert traffic.¹⁴

Also, there is no protectable due process interest in renewal or extension of a contract which has a fixed expiration date,¹⁵ government funding,¹⁶ fire protection by a city,¹⁷ admission to graduate school,¹⁸ participation in a high school commencement ceremony,¹⁹ reputation,²⁰ in suing the State or other governmental entities,²¹ or the right of a foreign corporation to extend its business within a particular state.²²

Likewise, there is no protectable property interest as to participation in a land use hearing,²³ occupancy of land in certain cases,²⁴ final approval of a preliminary plat application,²⁵ a city's approval of a developer's development projects,²⁶ connecting to a sewer line,²⁷ providing sewage treatment services,²⁸ utility rates,²⁹ the renewal of an insurance policy,³⁰ status as exclusive telecommunications providers,³¹ and freedom from expenses incurred by a person as a defendant.³²

The Due Process Clause is not designed to protect monopolies,³³ and there is no property right to be free of competition³⁴ or, conversely, to be a competitor of another business.³⁵ Neither an alleged right to be free from a business competitor's false advertising about its own product nor any more generalized right to be secure in one's business interests qualifies as a "property right."³⁶

The right to dispose of one's property as one sees fit is not traditionally recognized as a fundamental right for purposes of substantive due process.³⁷ Also, property values, air, and light have all been held not to be protected property interests.³⁸

The right to carry a concealed weapon is a privilege, not a right, and an applicant does not have a protected property interest in obtaining a concealed-firearm permit.³⁹

Public property.

The constitutional guaranty that no person shall be deprived of his or her property without due process of law does not apply to public rights or public property nor do the inhabitants of a political division or entity have any vested property interests in the property of the division or entity which are entitled to the protection of the Due Process Clause.⁴⁰

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Footnotes

- 1 Mich.—*Sherwin v. Mackie*, 364 Mich. 188, 111 N.W.2d 56 (1961).
Wash.—*Senior Citizens League v. Department of Social Sec. of Wash.*, 38 Wash. 2d 142, 228 P.2d 478 (1951).
Possibility of receiving scholarship not property interest
Ind.—*Indiana High School Athletic Ass'n, Inc. v. Carlberg by Carlberg*, 694 N.E.2d 222, 125 Ed. Law Rep. 821 (Ind. 1997).
As to Due Process Clauses protecting vested rights only, see § 1896.

- 2 U.S.—*Fox River Paper Co. v. Railroad Com'n of Wisconsin*, 274 U.S. 651, 47 S. Ct. 669, 71 L. Ed. 1279 (1927).
- Renewal leases under statute declared void**
- 3 Neb.—*State v. Cooley*, 156 Neb. 330, 56 N.W.2d 129 (1952).
- Mass.—*Cole v. Brookline Housing Authority*, 4 Mass. App. Ct. 705, 360 N.E.2d 336 (1976).
- N.D.—*Hospital Services, Inc. v. Knutson*, 246 N.W.2d 754 (N.D. 1976).
- 4 Alaska—*City of Homer v. State, Dept. of Natural Resources*, 566 P.2d 1314 (Alaska 1977).
- 5 U.S.—*Southwestern Petroleum Corp. v. Udall*, 361 F.2d 650 (10th Cir. 1966).
- Idaho—*Idaho Quarterhorse Breeders Ass'n, Inc. v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).
- 6 U.S.—*Santori v. Fong*, 484 F. Supp. 1029 (E.D. Pa. 1980).
- 7 Pa.—*Pennsylvania Game Com'n v. Marich*, 542 Pa. 226, 666 A.2d 253 (1995).
- 8 Haw.—*Kekoa v. Supreme Court of Hawaii*, 55 Haw. 104, 516 P.2d 1239 (1973).
- 9 Ga.—*Ramsbottom Co. v. Bass/Zebulon Roads Neighborhood Ass'n*, 273 Ga. 798, 546 S.E.2d 778 (2001).
- 10 Vt.—*LaFlamme v. Essex Junction School Dist.*, 170 Vt. 475, 750 A.2d 993, 144 Ed. Law Rep. 306 (2000).
- 11 Me.—*Carroll F. Look Construction Co., Inc. v. Town Of Beals*, 2002 ME 128, 802 A.2d 994 (Me. 2002).
- Idaho—*SE/Z Const., L.L.C. v. Idaho State University*, 140 Idaho 8, 89 P.3d 848, 187 Ed. Law Rep. 1048 (2004).
- 12 U.S.—*Odessky v. F.T.C.*, 471 F. Supp. 1267 (D.D.C. 1979).
- 13 R.I.—*Malinou v. Kiernan*, 107 R.I. 342, 267 A.2d 692 (1970).
- 14 U.S.—*Jackson Sawmill Co., Inc. v. U.S.*, 428 F. Supp. 555 (E.D. Mo. 1977), judgment aff'd, 580 F.2d 302 (8th Cir. 1978).
- 15 Ohio—*Shady Acres Nursing Home, Inc. v. Canary*, 39 Ohio App. 2d 47, 68 Ohio Op. 2d 210, 316 N.E.2d 481 (10th Dist. Franklin County 1973).
- 16 U.S.—*National Consumer Information Center v. Gallegos*, 549 F.2d 822 (D.C. Cir. 1977); *Legal Services Corp. of Prince George's County, Md. v. Ehrlich*, 457 F. Supp. 1058 (D. Md. 1978); *Windham v. City of New York*, 405 F. Supp. 872 (S.D. N.Y. 1976).
- 17 Miss.—*Westbrook v. City of Jackson*, 665 So. 2d 833 (Miss. 1995).
- 18 Alaska—*Szejner v. University of Alaska*, 944 P.2d 481, 121 Ed. Law Rep. 333 (Alaska 1997).
- 19 Ga.—*Dolinger v. Driver*, 269 Ga. 141, 498 S.E.2d 252, 125 Ed. Law Rep. 986 (1998).
- 20 U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).
- Defamation**
- (1) Reputation alone is not a constitutionally protected interest although state law may create a right to damages for defamation.
- U.S.—*White v. Thomas*, 660 F.2d 680 (5th Cir. 1981).
- (2) Slander or defamation in and of itself does not implicate a property interest so as to be cognizable under the Fourteenth Amendment pertaining to deprivation of rights under color of state law.
- U.S.—*Stordahl v. Harrison*, 542 F. Supp. 721 (E.D. Va. 1982).
- 21 Miss.—*Wallace v. Town Of Raleigh*, 815 So. 2d 1203 (Miss. 2002).
- 22 U.S.—*National Council, Junior Order United American Mechanics of U.S. v. State Council of Virginia, Junior Order United American Mechanics of Virginia*, 203 U.S. 151, 27 S. Ct. 46, 51 L. Ed. 132 (1906).
- Certificate of authority**
- A certificate of authority to foreign corporation to conduct business in a state, in which it is not engaged in business and owns no property, and not accompanied by requisite license or registration does not constitute "property."
- Pa.—*Rule v. Price*, 323 Pa. 139, 185 A. 851 (1936).
- 23 **Adjoining landowner**
- Vt.—*In re Great Waters of America, Inc.*, 140 Vt. 105, 435 A.2d 956 (1981).
- 24 **Squatters**
- U.S.—*Amezquita v. Hernandez-Colon*, 518 F.2d 8 (1st Cir. 1975).
- 25 Mont.—*Kiely Const., L.L.C. v. City of Red Lodge*, 2002 MT 241, 312 Mont. 52, 57 P.3d 836 (2002).
- 26 Utah—*Patterson v. American Fork City*, 2003 UT 7, 67 P.3d 466 (Utah 2003).
- 27 S.C.—*Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462 (2004).

- 28 Ky.—*Spanish Cove Sanitation, Inc. v. Louisville-Jefferson County Metropolitan Sewer Dist.*, 72 S.W.3d 918 (Ky. 2002).
- 29 N.H.—*Appeal of Office of Consumer Advocate*, 148 N.H. 134, 803 A.2d 1054 (2002).
- 30 Ark.—*Johnson v. Encompass Ins. Co.*, 355 Ark. 1, 130 S.W.3d 553 (2003).
- 31 Wash.—*Washington Independent Telephone Ass'n v. Washington Utilities and Transp. Com'n*, 149 Wash. 2d 17, 65 P.3d 319 (2003).
- 32 **U.S. administrative proceeding**
U.S.—*Paskaly v. Seale*, 506 F.2d 1209 (9th Cir. 1974).
- Criminal cases**
Time and expense incurred by a criminal defendant in satisfying the constitutional jurisdiction requirement is not a property right protected by the Due Process Clause of the Fourteenth Amendment.
- Ariz.—*State v. Rich*, 27 Ariz. App. 207, 553 P.2d 240 (Div. 1 1976).
- 33 Ky.—*Hamilton v. International Union of Operating Engineers*, 262 S.W.2d 695 (Ky. 1953).
- 34 U.S.—*Consolidated Television Cable Service, Inc. v. City of Frankfort*, 465 F.2d 1190 (6th Cir. 1972); *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 67 A.L.R. Fed. 1 (D.C. Cir. 1981).
- 35 Iowa—*Greenwood Manor v. Iowa Dept. of Public Health, State Health Facilities Council*, 641 N.W.2d 823 (Iowa 2002).
- 36 U.S.—*College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 119 S. Ct. 2219, 144 L. Ed. 2d 605, 135 Ed. Law Rep. 362 (1999).
- 37 U.S.—*211 Eighth, LLC v. Town of Carbondale*, 922 F. Supp. 2d 1174 (D. Colo. 2013).
- Most beneficial use of property**
A legislative body does not deny due process simply because it does not permit a landowner to make the most beneficial use of its property.
- S.C.—*McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 719 S.E.2d 660, 275 Ed. Law Rep. 434 (2011).
- 38 U.S.—*Residences at Riverbend Condominium Association v. City of Chicago*, 5 F. Supp. 3d 982 (N.D. Ill. 2013), appeal dismissed, (7th Circ. 14-1366) (Sept. 26, 2014).
- 39 Wyo.—*King v. Wyoming Div. of Criminal Investigation*, 2004 WY 52, 89 P.3d 341 (Wyo. 2004).
- 40 U.S.—*Lefthand v. Crow Tribal Council of Crow Tribe of Indians of Mont.*, 329 F. Supp. 728 (D. Mont. 1971).

16C C.J.S. Constitutional Law § 1899

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1899. Causes of action

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  2648, 3874, 4070

Generally, causes of action or claims that have accrued under existing law are vested property rights.

Causes of action or claims that have accrued under existing law are vested property rights,¹ and a chose in action is also a protectable property interest.² However, it has been held that it is not possible to have a property interest in a cause of action arising out of a common-law tort³ although it has also been held that vested rights of action in tort may be classified as constitutionally protected property interests.⁴

There may not ordinarily be a constitutionally protected vested property right in a particular cause of action accruing after a statute limits or abrogates the cause of action.⁵ The right to due process is not violated simply because a statute extinguishes a cause of action before a claimant discovers the injury, rather, the due process analysis focuses on whether the claimant has a vested property interest in the cause of action.⁶ Accordingly, while a litigant has a property interest in a cause of action of which he or she may not be deprived without due process, a state may, consistent with due process, terminate the litigant's claim or appeal for failure to comply with a reasonable procedural or evidentiary rule such as a statute of limitations.⁷ It has

been noted that if a statute of repose has run, no legally recognized cause of action can accrue and, therefore, no property right protected by due process can vest.⁸

For purposes of due process analysis, a party has a valid property interest in an administrative appeal.⁹

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Footnotes

- 1 Kan.—*Holt ex rel. Holt v. Wesley Medical Center, LLC*, 277 Kan. 536, 86 P.3d 1012 (2004).
Md.—*Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002).
Utah—*Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, 44 P.3d 663 (Utah 2002).
No protected interest in favorable jury verdict
Md.—*University of Maryland Medical System Corp. v. Malory*, 143 Md. App. 327, 795 A.2d 107 (2001).
Against government official
Even if a cause of action for wrongful death created by the State was a species of "property" protected by the Due Process Clause, a statute which conferred immunity on officials responsible for parole decisions but did not authorize or immunize the deliberate killing of any human being did not deprive plaintiff of property without due process of law merely because it condoned a parole release which led indirectly to a killing by a parolee some five months after such release.
U.S.—*Martinez v. State of Cal.*, 444 U.S. 277, 100 S. Ct. 553, 62 L. Ed. 2d 481 (1980).
- 2 U.S.—*Northeast Georgia Radiological Associates, P. C. v. Tidwell*, 670 F.2d 507 (5th Cir. 1982); *Kizas v. Webster*, 492 F. Supp. 1135, 29 Fed. R. Serv. 2d 1004 (D.D.C. 1980), judgment aff'd, 707 F.2d 524 (D.C. Cir. 1983).
- 3 Md.—*Rios v. Montgomery County*, 386 Md. 104, 872 A.2d 1 (2005).
- 4 Tenn.—*Mills v. Wong*, 155 S.W.3d 916 (Tenn. 2005).
- 5 Md.—*Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002).
- 6 Wis.—*Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund*, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 (2000).
- 7 Ga.—*Georgia Dept. of Medical Assistance v. Columbia Convalescent Center*, 265 Ga. 638, 458 S.E.2d 635 (1995).
- 8 Wis.—*Aicher ex rel. LaBarge v. Wisconsin Patients Compensation Fund*, 2000 WI 98, 237 Wis. 2d 99, 613 N.W.2d 849 (2000).
- 9 Md.—*Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 707 A.2d 891 (1998), aff'd, 355 Md. 397, 735 A.2d 991 (1999).

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16C C.J.S. Constitutional Law § 1900

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1900. Employment rights; right to pursue lawful business, trade, profession, or occupation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070, 4156, 4165, 4187

Employment status is a property interest protectable by due process where the employee has an express or implied right to continued employment, or a legitimate claim of entitlement thereto, although an employee whose employment is terminable at will does not have a property interest in his or her employment.

The right to earn a living is a property right under the Due Process Clause.¹ The term "property" includes the right to pursue a lawful business, trade, profession, or occupation.² Thus, deprivation of the tools and equipment whereby a party earns a livelihood is the deprivation of a property interest subject to due process protection.³

Employment status is a property interest protectable by due process where the employee has an express or implied right to continued employment,⁴ or a legitimate claim of entitlement thereto,⁵ and under some authority, such interest may have its source in something less formal than a statute or contract.⁶ However, an abstract need or desire for employment⁷ or an employee's unilateral expectation of employment is not property under the due process guaranty.⁸ Thus, an employee whose employment

is terminable at will does not have a property interest in his or her employment,⁹ and mere longevity alone does not create a due process protected property interest in continued employment.¹⁰

There is no inherent property interest in prospective employment.¹¹ Further, a probationary employee has no property interest in continued employment sufficient to warrant procedural due process protection.¹² Additionally, employment gained by inappropriate, if not illegal, means creates no protected property interests.¹³ In any event, the question of whether a property interest in employment exists for purposes of the Due Process Clause must be examined by reference to state law.¹⁴

An employee with a property right in employment is protected only by the procedural component of the Due Process Clause, not its substantive component.¹⁵ A motor carrier, which had been ordered by the Secretary of Labor to temporarily reinstate an employee until the Secretary could determine whether the employee had been discharged for whistle blowing activity, did not have a "property interest," such as would support a procedural due process claim, in being able to rely exclusively on contractually mandated arbitration procedures to determine the propriety of the discharge.¹⁶

A collective bargaining agreement vests state employees with a property interest in their employment.¹⁷

A public employee has no property interest in a promotion, for due process purposes, where the promotion depends on the discretion of the supervisor, and where such discretion exists, the employee has only a unilateral expectation of promotion.¹⁸ Similarly, an employee promoted on a probationary basis has no more than a unilateral expectation of being permanently appointed to that higher rank and, therefore, does not possess a property interest in that position.¹⁹ A public employee's unilateral beliefs or expectations regarding his or her qualification for a promotion do not create a due process "property interest" in the promotion.²⁰

If a statute or regulation places substantive restrictions on the discretion to demote a public employee, such as providing that discipline may only be imposed for cause, then a property interest is created.²¹

An employee has no constitutionally protected property interest in actually performing his or her job, and a suspension with pay, for alleged improper on-duty activity, does not deprive the employee of a protected property right.²²

Each listed member and retiree of a retirement plan has a property interest in the retirement system protected by Due Process Clause.²³ However, an employee may not have a property interest right in early retirement benefits.²⁴

Independent contractor.

An independent contractor has at most a mere expectancy of future employment and not a right to continued employment.²⁵

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Footnotes

- 1 Cal.—*DeMille v. American Federation of Radio Artists*, 31 Cal. 2d 139, 187 P.2d 769, 175 A.L.R. 382 (1947).
Ky.—*Hill v. United Public Workers Union of America*, 314 Ky. 791, 236 S.W.2d 887 (1950).
N.J.—*Carroll v. Local No. 269 Intern. Broth. of Elec. Workers*, 133 N.J. Eq. 144, 31 A.2d 223 (Ch. 1943).
- 2 Ill.—*Lyon v. Department of Children and Family Services*, 209 Ill. 2d 264, 282 Ill. Dec. 799, 807 N.E.2d 423, 187 Ed. Law Rep. 726 (2004).

Reappointment to hospital staff

A physician's interest in being reappointed to a hospital staff is a property interest which may not be denied without compliance with the procedural and substantive due process requirements of the Fourteenth Amendment.

S.C.—*In re Vora*, 354 S.C. 590, 582 S.E.2d 413 (2003).

U.S.—*Castanza v. Town of Brookhaven*, 700 F. Supp. 2d 277 (E.D. N.Y. 2010) (under New York law).

Ind.—*Board of School Com'rs of City of Indianapolis v. Walpole*, 801 N.E.2d 622, 184 Ed. Law Rep. 535 (Ind. 2004).

La.—*Slowinski v. England Economic and Industrial Development Dist.*, 828 So. 2d 520 (La. 2002).

Miss.—*Harris v. Mississippi Valley State University*, 873 So. 2d 970, 188 Ed. Law Rep. 562 (Miss. 2004).

As determined by state law

U.S.—*Redd v. Nolan*, 663 F.3d 287 (7th Cir. 2011).

No rights after expiration of contract

U.S.—*AFSCME Local 818 v. City of Waterbury*, 389 F. Supp. 2d 431 (D. Conn. 2005), judgment aff'd, 198 Fed. Appx. 47 (2d Cir. 2006).

Tenure has status of property right

La.—*Moore v. Ware*, 839 So. 2d 940 (La. 2003).

Limitation on tenure

Tenured teacher's constitutional property interest in continued employment does not include entitlement to particular teaching assignment of teacher's own choosing.

Conn.—*Sekor v. Board of Educ. of the Town of Ridgefield*, 240 Conn. 119, 689 A.2d 1112, 116 Ed. Law Rep. 1049 (1997).

Discharge for cause

(1) Public employees who can be discharged only for cause have a constitutionally protected property interest in their tenure and cannot be fired without due process.

U.S.—*Gilbert v. Homar*, 520 U.S. 924, 117 S. Ct. 1807, 138 L. Ed. 2d 120, 118 Ed. Law Rep. 590 (1997).

Iowa.—*Simonson v. Iowa State University*, 603 N.W.2d 557, 140 Ed. Law Rep. 754 (Iowa 1999).

(2) A person employed by a school committee as a director of special education had no protected property interest in continued employment, beyond the term of the contract, where although the contract required "cause" for dismissal during its term, the portion of the contract discussing nonrenewal and nonextension contained no such provision.

Me.—*Cook v. Lisbon School Committee*, 682 A.2d 672, 113 Ed. Law Rep. 317 (Me. 1996).

U.S.—*Cromwell v. City of Momence*, 713 F.3d 361 (7th Cir. 2013); *Hoey v. District of Columbia*, 540 F. Supp. 2d 218 (D.D.C. 2008).

Iowa.—*Bailiff v. Adams County Conference Bd.*, 650 N.W.2d 621 (Iowa 2002).

Ky.—*Romero v. Administrative Office of Courts*, 157 S.W.3d 638 (Ky. 2005), as modified, (Mar. 21, 2005).

Public employee

To allege a violation of procedural due process rights, a public employee must demonstrate the existence of a legitimate property or liberty interest in his or her employment; there must be a legitimate expectation of continued employment.

Okla.—*Barnhouse v. City of Edmond*, 2003 OK 42, 73 P.3d 840 (Okla. 2003).

U.S.—*Glenn v. Newman*, 614 F.2d 467 (5th Cir. 1980); *Colm v. Vance*, 567 F.2d 1125 (D.C. Cir. 1977).

Mutual understanding

Mutual understanding between employer and employee can, for due process purposes, create property interest in continued employment even in absence of written contract or statutory protections.

U.S.—*Wehner v. Levi*, 562 F.2d 1276 (D.C. Cir. 1977).

Ky.—*Romero v. Administrative Office of Courts*, 157 S.W.3d 638 (Ky. 2005), as modified, (Mar. 21, 2005).

Ky.—*Romero v. Administrative Office of Courts*, 157 S.W.3d 638 (Ky. 2005), as modified, (Mar. 21, 2005).

W. Va.—*Kessel v. Monongalia County General Hosp. Co.*, 215 W. Va. 609, 600 S.E.2d 321 (2004).

Unilateral, subjective expectations

Unilateral, subjective expectations on the part of an employee of a public institution, which are developed apart from any action, undertaking, or position of the institution, are not sufficient to give rise to a protected property interest.

W. Va.—*Hupp v. Sasser*, 200 W. Va. 791, 490 S.E.2d 880, 121 Ed. Law Rep. 382 (1997).

- 9 U.S.—*Eisenhour v. Weber County*, 744 F.3d 1220 (10th Cir. 2014).
Alaska—*Blackburn v. State, Dept. of Transp. and Public Facilities*, 103 P.3d 900 (Alaska 2004).
Iowa—*Davis v. Horton*, 661 N.W.2d 533 (Iowa 2003).
Nev.—*State v. Eighth Judicial Dist. Court ex rel. County of Clark*, 118 Nev. 140, 42 P.3d 233 (2002).
Absence of tenure
Md.—*Marriott v. Cole*, 115 Md. App. 493, 694 A.2d 123, 118 Ed. Law Rep. 1065 (1997).
N.D.—*Thompson v. Peterson*, 546 N.W.2d 856, 108 Ed. Law Rep. 1273 (N.D. 1996).
Presumption that employment relationships are "at-will"
U.S.—*Pucci v. Nineteenth Dist. Court*, 628 F.3d 752 (6th Cir. 2010) (under Michigan law); *Cromwell v. City of Mومence*, 713 F.3d 361 (7th Cir. 2013) (under Illinois law).
Open Meetings Act
Open Meetings Act does not give an at-will employee a property interest in his or her job by giving the employee a right to be present at any meeting where his or her reputation is at issue, and a right to request that meeting be public.
Alaska—*Revelle v. Marston*, 898 P.2d 917 (Alaska 1995).
- 10 U.S.—*Bollow v. Federal Reserve Bank of San Francisco*, 650 F.2d 1093, 32 Fed. R. Serv. 2d 1369 (9th Cir. 1981).
- 11 Pa.—*Merrell v. Chartiers Valley School Dist.*, 579 Pa. 97, 855 A.2d 713, 191 Ed. Law Rep. 402 (2004).
- 12 Ala.—*Ex parte Craft*, 727 So. 2d 55, 133 Ed. Law Rep. 286 (Ala. 1999).
Ohio—*State ex rel. Rose v. Ohio Dept. of Rehab. & Corr.*, 91 Ohio St. 3d 453, 2001-Ohio-95, 746 N.E.2d 1103 (2001).
- 13 Miss.—*Tillmon v. Mississippi State Dept. of Health*, 749 So. 2d 1017 (Miss. 1999).
- 14 Mont.—*Boreen v. Christensen*, 280 Mont. 378, 930 P.2d 67 (1996).
- 15 Ga.—*Sears v. Dickerson*, 278 Ga. 900, 607 S.E.2d 562 (2005).
- 16 U.S.—*Brock v. Roadway Exp., Inc.*, 481 U.S. 252, 107 S. Ct. 1740, 95 L. Ed. 2d 239 (1987).
- 17 Okla.—*Barnthouse v. City of Edmond*, 2003 OK 42, 73 P.3d 840 (Okla. 2003).
Vt.—*In re Gregoire*, 166 Vt. 66, 689 A.2d 431 (1996).
- 18 Wyo.—*Bachmeier v. Hoffman*, 1 P.3d 1236 (Wyo. 2000).
- 19 Wis.—*Kraus v. City of Waukesha Police and Fire Com'n*, 2003 WI 51, 261 Wis. 2d 485, 662 N.W.2d 294 (2003).
- 20 Idaho—*Cook v. State, Dept. of Transp.*, 133 Idaho 288, 985 P.2d 1150 (1999).
Mass.—*Bielawski v. Personnel Adm'r of Div. of Personnel Admin.*, 422 Mass. 459, 663 N.E.2d 821 (1996).
Hope for advancement
Neither hope for professional advancement nor unilateral anticipation of possible job-related perquisites gives rise to constitutionally protected property interest.
Conn.—*Hunt v. Prior*, 236 Conn. 421, 673 A.2d 514 (1996).
- 21 Okla.—*Barnthouse v. City of Edmond*, 2003 OK 42, 73 P.3d 840 (Okla. 2003).
- 22 Md.—*City of Annapolis v. Rowe*, 123 Md. App. 267, 717 A.2d 976 (1998).
- 23 Wis.—*Association of State Prosecutors v. Milwaukee County*, 199 Wis. 2d 549, 544 N.W.2d 888 (1996).
Divorced wife had no property interest in former husband's retirement benefits
Ky.—*Weiland v. Board of Trustees of Kentucky Retirement Systems*, 25 S.W.3d 88 (Ky. 2000).
- 24 Wyo.—*Peterson v. Sweetwater County School Dist. No. One*, 929 P.2d 525, 115 Ed. Law Rep. 116 (Wyo. 1996).
- 25 Ky.—*Romero v. Administrative Office of Courts*, 157 S.W.3d 638 (Ky. 2005), as modified, (Mar. 21, 2005).

16C C.J.S. Constitutional Law § 1901

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1901. Licenses

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070, 4262, 4289, 4356

A license may be a protectable property interest under the due process guaranty.

A license which entitles the holder to operate a business and the continued possession of which "may become essential in the pursuit of a livelihood" is a protectable property interest under the Due Process Clause.¹ However, the procurement of a business license does not, by itself, give the license holder vested property rights protected by due process.²

A professional license is a constitutionally protected property interest which must be awarded due process.³ However, the right to a license is not inviolable,⁴ and generally, licenses do not create a property interest protected by due process when broad discretion is vested in a state official or agency to deny or approve the license application⁵ because in such cases, the applicant has little more than an abstract or unilateral expectation in the license.⁶

While it has been held that the right to practice law is a valuable property right which can be denied only by due process of law,⁷ it has also been held that the right to practice law is not a constitutional right but a privilege subject to the control of the legislature under its police power.⁸

Liquor license.

Generally, "property" does not include the right to possess, make, or deal in intoxicating liquors,⁹ or a license for the sale of intoxicating liquors¹⁰ or other beverages, including those commonly described as "soft drinks."¹¹ However, under some state laws, a liquor license is considered a property right protected by due process.¹²

Driver's license.

A driver's license is a constitutionally protected property interest,¹³ once it has been conferred, even though driving is a privilege rather than a constitutional right.¹⁴

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Footnotes

- 1 Ga.—*Goldrush II v. City of Marietta*, 267 Ga. 683, 482 S.E.2d 347 (1997).
- 2 Ga.—*Quetgles v. City of Columbus*, 268 Ga. 619, 491 S.E.2d 778 (1997).
- 3 Idaho—*Cooper v. Board of Professional Discipline of Idaho State Bd. of Medicine*, 134 Idaho 449, 4 P.3d 561 (2000).
N.M.—*Mills v. New Mexico State Bd. of Psychologist Examiners*, 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502 (1997).
Lawyers
Mass.—*Matter of Ellis*, 425 Mass. 332, 680 N.E.2d 1154 (1997).
Physicians
Pa.—*Telang v. Com. Bureau of Professional and Occupational Affairs*, 561 Pa. 535, 751 A.2d 1147 (2000).
Wash.—*Nguyen v. State, Department of Health Medical Quality Assurance Commission*, 144 Wash. 2d 516, 29 P.3d 689 (2001).
Dentists
Okla.—*Johnson v. Board of Governors of Registered Dentists of State of Okl.*, 1996 OK 41, 913 P.2d 1339 (Okla. 1996), corrected, (May 2, 1996).
Psychologists
N.H.—*Appeal of Trotzer*, 143 N.H. 64, 719 A.2d 584 (1998).
Veterinarians
Nev.—*Gilman v. Nevada State Bd. of Veterinary Medical Examiners*, 120 Nev. 263, 89 P.3d 1000 (2004) (disapproved of on other grounds by, *Nassiri v. Chiropractic Physicians' Bd.*, 327 P.3d 487, 130 Nev. Adv. Op. No. 27 (Nev. 2014)).
Racing license
Wyo.—*Roush v. Pari-Mutuel Com'n of State of Wyo.*, 917 P.2d 1133, 59 A.L.R.5th 803 (Wyo. 1996).
Brothel license
Nev.—*Burgess v. Storey County Bd. of Com'rs*, 116 Nev. 121, 992 P.2d 856 (2000).
Interest in outcome of proceedings regarding license
Md.—*Regan v. Board of Chiropractic Examiners*, 120 Md. App. 494, 707 A.2d 891 (1998), aff'd, 355 Md. 397, 735 A.2d 991 (1999).- 4 U.S.—*Kudla v. Modde*, 537 F. Supp. 87 (E.D. Mich. 1982), aff'd, 711 F.2d 1057 (6th Cir. 1983).
Provisional license did not give rise to a property right
N.Y.—*Daxor Corp. v. State Dept. of Health*, 90 N.Y.2d 89, 659 N.Y.S.2d 189, 681 N.E.2d 356 (1997).
No property interest in licensure

A child-care provider who was convicted of negligent child abuse lacked a protected property interest in licensure to operate a child-care business, thus defeating the argument that denial of a request to expunge her name from the central child abuse registry violated substantive due process.

Neb.—[Benitez v. Rasmussen](#), 261 Neb. 806, 626 N.W.2d 209 (2001).

U.S.—[Caesars Massachusetts Management Co., LLC v. Crosby](#), 778 F.3d 327 (1st Cir. 2015) (under Massachusetts law).

Me.—[Munjoy Sporting & Athletic Club v. Dow](#), 2000 ME 141, 755 A.2d 531 (Me. 2000).

Me.—[Munjoy Sporting & Athletic Club v. Dow](#), 2000 ME 141, 755 A.2d 531 (Me. 2000).

Cal.—[In re Rose](#), 22 Cal. 4th 430, 93 Cal. Rptr. 2d 298, 993 P.2d 956 (2000).

Rules of Professional Conduct

The Rules of Professional Conduct for attorneys are not intended to secure a property interest protected by due process in the reports of misconduct made by attorneys even where the rules impose a duty on attorneys to report misconduct.

Idaho—[Bradbury v. Idaho Judicial Council](#), 136 Idaho 63, 28 P.3d 1006 (2001).

Reprimand of attorney

Procedures for the imposition of a private reprimand of an attorney do not implicate the attorney's property interest in practicing law.

Idaho—[Matter of Malmin](#), 126 Idaho 1024, 895 P.2d 1217 (1995).

U.S.—[Emmons v. Smitt](#), 58 F. Supp. 869 (E.D. Mich. 1944), order aff'd, 149 F.2d 869 (C.C.A. 6th Cir. 1945).

Tenn.—[Lamb v. Whitaker](#), 171 Tenn. 485, 105 S.W.2d 105 (1937).

As to nature of right to practice law, generally, see [C.J.S., Attorney and Client § 2](#).

Probate judge

A probate judge who, under a statute relating to the practice of law by probate judges, could either resign judgeship and continue private practice, or wind up private practice and be compensated as full-time probate judge, was not deprived of valuable property right without due process of law.

Mich.—[Green v. Hart](#), 44 Mich. App. 259, 205 N.W.2d 306 (1972).

Cal.—[Irvine v. State Bd. of Equalization](#), 40 Cal. App. 2d 280, 104 P.2d 847 (2d Dist. 1940).

U.S.—[Tracy v. Ginzberg](#), 205 U.S. 170, 27 S. Ct. 461, 51 L. Ed. 755 (1907).

S.D.—[Woodruff v. Meade County Bd. of Com'rs](#), 537 N.W.2d 384 (S.D. 1995).

Mere privilege

Wyo.—[Albertson's, Inc. v. City of Sheridan](#), 2001 WY 98, 33 P.3d 161 (Wyo. 2001).

Ga.—[Cassidy v. City of Macon](#), 133 Ga. 689, 66 S.E. 941 (1909).

U.S.—[Pro's Sports Bar & Grill, Inc. v. City of Country Club Hills](#), 589 F.3d 865 (7th Cir. 2009) (under Illinois law).

Alaska—[Rollins v. State, Dept. of Revenue, Alcoholic Beverage Control Bd.](#), 991 P.2d 202 (Alaska 1999).

Ga.—[Goldrush II v. City of Marietta](#), 267 Ga. 683, 482 S.E.2d 347 (1997).

Haw.—[Gray v. Administrative Director of the Court, State of Hawaii](#), 84 Haw. 138, 931 P.2d 580 (1997).

Md.—[Motor Vehicle Admin. v. Lytle](#), 374 Md. 37, 821 A.2d 62 (2003).

N.Y.—[Allen v. New York State Dept. of Motor Vehicles](#), 45 Misc. 3d 475, 991 N.Y.S.2d 701 (Sup 2014).

Wash.—[State v. Dolson](#), 138 Wash. 2d 773, 982 P.2d 100 (1999).

W. Va.—[David v. Commissioner of West Virginia Div. of Motor Vehicles](#), 219 W. Va. 493, 637 S.E.2d 591 (2006).

Haw.—[Gray v. Administrative Director of the Court, State of Hawaii](#), 84 Haw. 138, 931 P.2d 580 (1997).

16C C.J.S. Constitutional Law § 1902

Corpus Juris Secundum | June 2021 Update

Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1902. Marital rights and other family-related rights in property

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 4070, 4475

The courts have adjudicated a variety of issues related to whether marital rights and other family-related rights in property are property interests protected by the requirements of due process.

"Property" includes marital rights in property¹ but not the marital rights of one spouse in the affections and society of the other spouse.²

While it has been held that a parent, or one standing in loco parentis, has no property right in a child,³ it has also been held that the rights of parents over their children are in the nature of property rights and protected by the Due Process Clause.⁴

Under some authority, there is no constitutionally protected property interest in the remains of loved ones.⁵ However, it has also been held that the next of kin of a deceased relative has a protected property interest in his or her dead relative's body⁶ and that an individual's interest in his or her deceased spouse's body parts rises to the level of a "legitimate claim of entitlement" protected by the Due Process Clause.⁷

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Footnotes

- 1 Cal.—[Cooke v. Cooke](#), 65 Cal. App. 2d 260, 150 P.2d 514 (4th Dist. 1944).
Pa.—[Willcox v. Penn Mut. Life Ins. Co.](#), 357 Pa. 581, 55 A.2d 521, 174 A.L.R. 220 (1947).
- 2 Fla.—[Rotwein v. Gersten](#), 160 Fla. 736, 36 So. 2d 419 (1948).
Ind.—[Pennington v. Stewart](#), 212 Ind. 553, 10 N.E.2d 619 (1937).
N.Y.—[Hanfgarn v. Mark](#), 274 N.Y. 22, 8 N.E.2d 47 (1937).
- 3 N.J.—[Fischer v. Meader](#), 95 N.J.L. 59, 111 A. 503 (N.J. Sup. Ct. 1920).
Tenn.—[Kenner v. Kenner](#), 139 Tenn. 700, 202 S.W. 723 (1918).
Va.—[Turner v. Children's Home Soc. of Virginia](#), 158 Va. 406, 163 S.E. 399, 80 A.L.R. 1125 (1932).
Parent as having no property right in child, generally, see C.J.S., Parent and Child § 3.
- 4 Tex.—[Brooks v. De Witt](#), 178 S.W.2d 718 (Tex. Civ. App. San Antonio 1944), judgment rev'd on other grounds, 143 Tex. 122, 182 S.W.2d 687 (1944).
- 5 U.S.—[Shelley v. County of San Joaquin](#), 996 F. Supp. 2d 921 (E.D. Cal. 2014).
Siblings have no property interest in the decedent's remains
U.S.—[Chaudhry v. City of Los Angeles](#), 751 F.3d 1096 (9th Cir. 2014), for additional opinion, see, 573 Fed. Appx. 628 (9th Cir. 2014) and petition for certiorari filed, 135 S. Ct. 295, 190 L. Ed. 2d 141 (2014) (under California law).
Parents had no property interest in their deceased son's brain
U.S.—[Albrecht v. Treon](#), 617 F.3d 890 (6th Cir. 2010) (under Ohio law).
- 6 U.S.—[Whaley v. County of Tuscola](#), 58 F.3d 1111, 1995 FED App. 0205P (6th Cir. 1995).
Limited constitutionally protected due process property interest
U.S.—[Fowkes v. Wayne County](#), 836 F. Supp. 2d 526 (E.D. Mich. 2011).
Conduct not shocking the conscience
A county coroner and county medical director's failure to terminate a county employee who sexually abused the corpses of murder victims, prior to discovering the abuse, did not shock the conscience, and thus did not amount to deliberate indifference to any substantive due process rights the victims' families may have had in the victims' bodies under the Fourteenth Amendment, notwithstanding that the director and the coroner were aware that the employee drank on the job, had visitors, and possibly had sex with some of those visitors, where nothing indicated to director or coroner that employee was sexually abusing the bodies.
U.S.—[Range v. Douglas](#), 763 F.3d 573 (6th Cir. 2014).
- 7 U.S.—[Brotherton v. Cleveland](#), 923 F.2d 477 (6th Cir. 1991).

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16C C.J.S. Constitutional Law § 1903

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

2. Particular Property or Rights Protected or Not Protected

§ 1903. Property of prison inmates

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874, 3924, 4070, 4822, 4829

While certain forms of property owned by a prison inmate are entitled to due process protection, other items are not are not regarded as property for purposes of due process.

When a prison inmate is afforded an opportunity to possess personal property, he or she enjoys a protected interest in that property that cannot be infringed upon without due process.¹ An inmate's money in prison accounts is a protected property interest.² However, inmates have no property right protected by due process to prison wages³ or a particular wage scale attaching to his or her prison employment,⁴ restitution funds deducted from his or her earned prison allowances,⁵ benefits to be derived from a prison's recreation fund,⁶ good time credits,⁷ or computers in the inmates' cells.⁸

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Footnotes

¹ Kan.—[Stansbury v. Hannigan](#), 265 Kan. 404, 960 P.2d 227 (1998).

- 2 U.S.—[Burns v. PA Dept. of Corrections](#), 642 F.3d 163 (3d Cir. 2011).
Iowa—[State v. Ashburn](#), 534 N.W.2d 106 (Iowa 1995).
Tenn.—[Willis v. Tennessee Dept. of Correction](#), 113 S.W.3d 706 (Tenn. 2003).
Prison inmate trust account
Tex.—[In re D.L.D.](#), 374 S.W.3d 509 (Tex. App. San Antonio 2012).
3 Iowa—[State v. Love](#), 589 N.W.2d 49 (Iowa 1998).
4 Wyo.—[Garnett v. Brock](#), 2 P.3d 558 (Wyo. 2000) (overruled on other grounds by, [Brown v. City of Casper](#), 2011 WY 35, 248 P.3d 1136 (Wyo. 2011)).
5 Iowa—[State v. Love](#), 589 N.W.2d 49 (Iowa 1998).
6 U.S.—[Booker-El v. Superintendent, Indiana State Prison](#), 668 F.3d 896 (7th Cir. 2012).
7 Md.—[City of Annapolis v. Rowe](#), 123 Md. App. 267, 717 A.2d 976 (1998).
R.I.—[Barber v. Vose](#), 682 A.2d 908 (R.I. 1996).
8 W. Va.—[State ex rel. Anstey v. Davis](#), 203 W. Va. 538, 509 S.E.2d 579 (1998).

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16C C.J.S. Constitutional Law § 1904

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

3. What Constitutes Deprivation of Property

§ 1904. What constitutes deprivation of property, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  4070

Reasonable regulations and restrictions on the use and control of private property, imposed by legislative action, under the police power for the general welfare of the public, do not constitute a deprivation of property without due process of law.

It is not every interference with property rights that constitutes a deprivation of property without due process.¹ Due process protects only against unfair and mistaken deprivation of property.² The Due Process Clause is not implicated by a state official's negligent act causing unintended loss of or injury to property,³ and a mere lack of due care by a state official does not "deprive" an individual of property under the Fourteenth Amendment.⁴ The deprivation must be of a property interest which is significant,⁵ or substantial,⁶ or which cannot be characterized as de minimis.⁷ Nevertheless, even in situations where the deprivation of property is temporary and nonfinal, the requirements of due process must be followed.⁸

While the general rule is that property rights shall be free of government interference,⁹ those rights are not absolute¹⁰ since the rights of property are necessarily relative to those held by others under the same constitutional sanctions.¹¹ Equally fundamental

with the private right is that of the public to regulate it in the common interest¹² for the protection of the safety, health, morals, or general welfare of the community,¹³ any loss resulting from such regulation being merely consequential.¹⁴

Thus, a statute or ordinance, enacted in pursuance of the police power of the State or municipality for the promotion of the general welfare of the public, may impose reasonable regulations and restrictions on the use and control of private property without depriving a person of his or her property in violation of the due process of law guaranties¹⁵ provided such regulations and restrictions bear a rational relation to subjects which fall fairly within the police power.¹⁶ As noted, an ordinance must be reasonable and not unnecessarily prohibitory in order to withstand a challenge of deprivation of property without due process.¹⁷ The regulation of property under a proper exercise of the police power is due process even though the property in whole or in part is taken or destroyed.¹⁸

Although the power of Congress to regulate commerce is subject to the limitations embraced in the due process of law guaranty,¹⁹ an act of Congress which imposes reasonable regulations and restrictions with relation to matters within the scope of federal authority does not violate the due process of law guaranty although it interferes to some extent with the rights of private property.²⁰

Applying the above rules, a statute or an ordinance, if a reasonable exercise of the police power for the public welfare, does not constitute a deprivation of property without due process of law merely because it limits or restricts the use which the owner may make of his or her property,²¹ or in effect destroys private rights of property,²² or diminishes the value of such property,²³ or indirectly causes damage or loss to individuals.²⁴

"Deprivation of property," within the meaning of the due process guaranty, does not require actual physical taking of the property or thing itself for public or private use.²⁵ Thus, to compel the owner of property to resort to law, under penalty of forfeiture, to establish his or her right to the property, that is, to gain back what the owner has never lost, would deny the owner the protection of the constitutional guaranty.²⁶ However, the guaranty against deprivation of property without due process is not violated by an act which deprives one of property or affects his or her property rights only by the person's own consent.²⁷

The determination of whether a statute constitutes a taking of property without due process of law consists in balancing the burden placed on the individual or corporation on the one hand against the benefits which will accrue to the public as a whole on the other hand, and if the benefit to the public outweighs the burden on the individual, the statute is a valid exercise of the police power.²⁸ Thus, legislative authority to abridge or destroy property rights can be justified only by exceptional or compelling circumstances.²⁹ This would include the existence of an emergency requiring drastic action to promote public welfare,³⁰ and only such use of property as may produce injurious consequences or infringe lawful rights of others can be restricted or prohibited without violating the constitutional provision against depriving one of property without due process of law.³¹

A mere breach of a contractual right,³² or the enforcement of a right secured by contract,³³ is not a deprivation of property without due process of law, and due process is not denied by the extinguishment of a right by the happening of a condition to which it has been subject.³⁴ The mere existence of a particular procedure, without more, does not create any substantive property interest, and thus, the failure to make the procedure available in a particular case does not constitute a deprivation of a constitutional magnitude.³⁵

- 1 U.S.—[Flower Cab Co. v. Petite](#), 685 F.2d 192 (7th Cir. 1982).
Mo.—[Clutter v. Blankenship](#), 346 Mo. 961, 144 S.W.2d 119 (1940).
Traditional property right
Denial of one traditional property right does not always amount to taking within meaning of Fifth Amendment.
U.S.—[Andrus v. Allard](#), 444 U.S. 51, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979).
- 2 U.S.—[Hester v. Rizzo](#), 454 F. Supp. 537 (E.D. La. 1978); [Stanley v. Big Eight Conference](#), 463 F. Supp. 920 (W.D. Mo. 1978).
Unwarranted deprivation
Cal.—[Tidewater Oil Co. v. Workers' Comp. Appeals Bd.](#), 67 Cal. App. 3d 950, 137 Cal. Rptr. 36 (1st Dist. 1977).
- 3 U.S.—[Daniels v. Williams](#), 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).
No violation if meaningful postdeprivation remedy for loss is available
U.S.—[Stuto v. Fleishman](#), 164 F.3d 820 (2d Cir. 1999).
- 4 U.S.—[Daniels v. Williams](#), 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986).
- 5 Neb.—[In re Application of GCC License Corp.](#), 264 Neb. 167, 647 N.W.2d 45 (2002).
N.H.—[Town of Nottingham v. Bonser](#), 146 N.H. 418, 777 A.2d 851 (2001).
Wyo.—[Amoco Production Co. v. Wyoming State Bd. of Equalization](#), 7 P.3d 900 (Wyo. 2000).
- 6 Idaho—[Fridenstine v. Idaho Dept. of Admin.](#), 133 Idaho 188, 983 P.2d 842 (1999).
Md.—[Roberts v. Total Health Care, Inc.](#), 109 Md. App. 635, 675 A.2d 995 (1996), *aff'd*, 349 Md. 499, 709 A.2d 142 (1998).
- 7 U.S.—[Application of U. S. of America for Order Authorizing Installation of Pen Register or Touch-Tone Decoder and Terminating Trap](#), 610 F.2d 1148, 58 A.L.R. Fed. 704 (3d Cir. 1979).
Cal.—[Horn v. County of Ventura](#), 24 Cal. 3d 605, 156 Cal. Rptr. 718, 596 P.2d 1134 (1979).
N.H.—[Town of Bethlehem v. Tucker](#), 119 N.H. 927, 409 A.2d 1334 (1979).
- 8 U.S.—[Fuentes v. Shevin](#), 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556, 10 U.C.C. Rep. Serv. 913 (1972); [Grand River Enterprises Six Nations, Ltd. v. Beebe](#), 418 F. Supp. 2d 1082 (W.D. Ark. 2006), *aff'd*, 574 F.3d 929 (8th Cir. 2009).
- 9 § 1894.
- 10 U.S.—[Breard v. City of Alexandria, La.](#), 341 U.S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 62 Ohio L. Abs. 210, 35 A.L.R.2d 335 (1951) (abrogated on other grounds by, [Village of Schaumburg v. Citizens for a Better Environment](#), 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980)).
- 11 N.J.—[City of Newark v. Charles Realty Co.](#), 9 N.J. Super. 442, 74 A.2d 630 (County Ct. 1950).
N.C.—[State v. Whitaker](#), 228 N.C. 352, 45 S.E.2d 860 (1947), *aff'd*, 335 U.S. 525, 69 S. Ct. 251, 93 L. Ed. 212, 6 A.L.R.2d 473 (1949).
- 12 U.S.—[Breard v. City of Alexandria, La.](#), 341 U.S. 622, 71 S. Ct. 920, 95 L. Ed. 1233, 62 Ohio L. Abs. 210, 35 A.L.R.2d 335 (1951) (abrogated on other grounds by, [Village of Schaumburg v. Citizens for a Better Environment](#), 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980)).
- 13 U.S.—[Texas Landowners Rights Ass'n v. Harris](#), 453 F. Supp. 1025 (D.D.C. 1978), *aff'd*, 598 F.2d 311 (D.C. Cir. 1979).
- 14 U.S.—[Brown v. Warner Holding Co.](#), 50 F. Supp. 593 (D. Minn. 1943).
N.J.—[Pennsylvania-Reading Seashore Lines v. Board of Public Utility Com'rs, Dept. of Public Utilities](#), 13 N.J. Super. 540, 81 A.2d 28 (App. Div. 1951), judgment *aff'd*, 8 N.J. 85, 83 A.2d 774 (1951).
- 15 U.S.—[Everson v. Board of Ed. of Ewing Tp.](#), 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392 (1947); [Arkansas Fuel Oil Co. v. State of La. ex rel. Muslow](#), 304 U.S. 197, 58 S. Ct. 832, 82 L. Ed. 1287 (1938).
Uncompensated obedience
Enforcement of uncompensated obedience to a reasonable police regulation is not a taking of property without due process of law.
U.S.—[New Orleans Public Service v. City of New Orleans](#), 281 U.S. 682, 50 S. Ct. 449, 74 L. Ed. 1115 (1930).
- 16 U.S.—[National Western Life Ins. Co. v. Commodore Cove Imp. Dist.](#), 678 F.2d 24 (5th Cir. 1982).
D.C.—[Vanderhoof v. District of Columbia](#), 269 A.2d 112 (D.C. 1970).
Promoting safety

While reasonable restriction upon the use which a landowner may make of property may be imposed under the police power in the interest of public safety, there must be a reasonable basis for supposing that the restriction imposed will promote such safety, otherwise the restriction is a deprivation of property without due process of law.

N.C.—*State v. Vestal*, 281 N.C. 517, 189 S.E.2d 152 (1972).

Wash.—*Jeffery v. McCullough*, 97 Wash. 2d 893, 652 P.2d 9 (1982).

U.S.—*Balent v. City of Wilkes-Barre*, 542 Pa. 555, 669 A.2d 309 (1995).

U.S.—*Secretary of Agriculture v. Central Roig Refining Co.*, 338 U.S. 604, 70 S. Ct. 403, 94 L. Ed. 381 (1950); *Currin v. Wallace*, 306 U.S. 1, 59 S. Ct. 379, 83 L. Ed. 441 (1939).

U.S.—*Berman v. Parker*, 348 U.S. 26, 75 S. Ct. 98, 99 L. Ed. 27 (1954); *Mabee v. White Plains Pub. Co.*, 327 U.S. 178, 66 S. Ct. 511, 90 L. Ed. 607 (1946).

U.S.—*Bowles v. Willingham*, 321 U.S. 503, 64 S. Ct. 641, 88 L. Ed. 892 (1944).

Md.—*Bureau of Mines of Maryland v. George's Creek Coal & Land Co.*, 272 Md. 143, 321 A.2d 748, 86 A.L.R.3d 1 (1974).

U.S.—*Andrus v. Allard*, 444 U.S. 51, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979).

Fluctuations in value

Due process does not protect owner from fluctuations in value of property resulting from governmental decisions to put neighboring public property to lawful, albeit unattractive, use.

U.S.—*Ancarrow v. City of Richmond*, 600 F.2d 443 (4th Cir. 1979).

U.S.—*Puget Sound Power & Light Co. v. City of Seattle*, Wash., 291 U.S. 619, 54 S. Ct. 542, 78 L. Ed. 1025 (1934).

Cal.—*Connolly Development, Inc. v. Superior Court*, 17 Cal. 3d 803, 132 Cal. Rptr. 477, 553 P.2d 637 (1976).

As to confiscation or destruction of property, see § 2055.

Okla.—*Williams v. Bailey*, 1954 OK 19, 268 P.2d 868 (Okla. 1954).

Mont.—*Great Falls Nat. Bank v. McCormick*, 152 Mont. 319, 448 P.2d 991 (1968).

Okla.—*Harmon v. Oklahoma Tax Com'n*, 1941 OK 319, 189 Okla. 475, 118 P.2d 205 (1941).

Fulfilling commitment

A Fifth Amendment "taking" of property does not occur when the State simply requires an individual to fulfill a commitment he or she has made.

Ala.—*Sparks v. Parker*, 368 So. 2d 528 (Ala. 1979).

U.S.—*Larry v. Lawler*, 605 F.2d 954 (7th Cir. 1978).

W. Va.—*Clarke v. West Virginia Bd. of Regents*, 166 W. Va. 702, 279 S.E.2d 169 (1981).

U.S.—*American Mail Line v. U.S.*, 101 Ct. Cl. 377, 1944 WL 3726 (1944).

D.C.—*Walsh v. Cooper*, 31 A.2d 883 (Mun. Ct. App. D.C. 1943).

Under war power

U.S.—*U.S. v. Seventy-Seven Acres of Land, More or Less, Located in Mobile County, Ala.*, 88 F. Supp. 349 (S.D. Ala. 1950); *Schueller v. Drum*, 51 F. Supp. 383 (E.D. Pa. 1943).

Determination of existence of emergency

If the State acts pursuant to a valid summary-action ordinance in effecting a prenotice deprivation of property, the State's determination that it was faced with an emergency requiring a summary abatement is entitled to deference on the property owner's procedural due process challenge; in such cases, the relevant inquiry is not whether an emergency actually existed, but whether the State acted arbitrarily or otherwise abused its discretion in concluding that there was an emergency requiring summary action.

U.S.—*RBIII, L.P. v. City of San Antonio*, 713 F.3d 840 (5th Cir. 2013).

Idaho—*Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

Me.—*Inhabitants of York Harbor Village Corp. v. Libby*, 126 Me. 537, 140 A. 382 (1928).

Tex.—*Bielecki v. City of Port Arthur*, 12 S.W.2d 976 (Tex. Comm'n App. 1929).

Prohibiting monopolistic clause in lease of patented article

The prohibition by the Clayton Act of clauses in leases of patented machinery which substantially lessen competition and tend to promote monopoly by prohibiting the use of leased machinery on shoes on which other operations have not been performed by defendants' machines, is not unconstitutional, as a taking from the patentees, without due process of law, property secured to them by their patents, because the right secured

by the patent consists only in the right to exclude others from making, using, or vending the thing patented without the permission of the patentee.

U.S.—*United Shoe Machinery Corporation v. U.S.*, 258 U.S. 451, 42 S. Ct. 363, 66 L. Ed. 708 (1922).

32 U.S.—*Bleeker v. Dukakis*, 665 F.2d 401 (1st Cir. 1981); *Jimenez v. Almodovar*, 650 F.2d 363 (1st Cir. 1981).

33 Tex.—*Pasadena Police Officers Ass'n v. City of Pasadena*, 497 S.W.2d 388 (Tex. Civ. App. Houston 1st Dist. 1973), writ refused n.r.e., (Nov. 7, 1973).

34 La.—*Baton Rouge Rice Mill v. Fairbanks, Morse & Co.*, 164 La. 729, 114 So. 633 (1927).

Redemption of mortgage

Ala.—*Huie v. Smith*, 236 Ala. 516, 183 So. 661 (1938).

35 U.S.—*Valentine v. Drug Enforcement Admin. of U.S. Dept. of Justice*, 544 F. Supp. 830 (N.D. Ill. 1982); *King v. Hilton*, 525 F. Supp. 1192 (D.N.J. 1981).

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16C C.J.S. Constitutional Law § 1905

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

3. What Constitutes Deprivation of Property

§ 1905. Police power abused or inapplicable

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3902, 4070

Property rights protected by the due process guaranties cannot be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.

Police power enactments must be reasonable and unreasonable exercises of the police power result in a deprivation of property without due process.¹ Specifically, a denial of due process of law results from any legislative action on the part of the state or federal,² or local³ government, which so takes away private property or any of its essential attributes,⁴ or imposes unreasonable restrictions on its use and enjoyment,⁵ or its sale or transfer,⁶ or which seriously impairs or destroys the value of the property or of its use.⁷

Such a deprivation of property may also result from a statutory provision which is so uncertain on its face as to be inconsistent with due process.⁸

Also, a law which assumes to be a police regulation but deprives the citizen of the use of his or her property under the pretense of preserving the public health, safety, comfort, or welfare, when it is manifest that such is not the real object and purpose of the regulation, will be set aside.⁹

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Footnotes

- 1 N.Y.—[Charles v. Diamond](#), 41 N.Y.2d 318, 392 N.Y.S.2d 594, 360 N.E.2d 1295 (1977).
Excessive regulations
 Court tests regulation of property to determine that government has not exceeded its police power, for excessive regulation of property violates Due Process Clause.
 Ga.—[Pope v. City of Atlanta](#), 242 Ga. 331, 249 S.E.2d 16 (1978).
- 2 Cal.—[Wissner v. Wissner](#), 89 Cal. App. 2d 759, 201 P.2d 837 (3d Dist. 1949), judgment rev'd on other grounds, 338 U.S. 655, 70 S. Ct. 398, 94 L. Ed. 424 (1950).
- 3 U.S.—[Smoke Rise, Inc. v. Washington Suburban Sanitary Commission](#), 400 F. Supp. 1369 (D. Md. 1975).
 Mich.—[Bauerle v. Board of County Road Com'rs for Charlevoix County](#), 34 Mich. App. 475, 191 N.W.2d 509 (1971).
- 4 Mich.—[Commodities Export Co. v. City of Detroit](#), 116 Mich. App. 57, 321 N.W.2d 842 (1982).
 N.Y.—[Young v. City of Binghamton](#), 112 Misc. 2d 1017, 447 N.Y.S.2d 1017 (Sup 1982).
Alteration of quality of rights
 Only when Congress attempts to alter quality of property rights created by state law does federal action become deprivation of property without due process.
 U.S.—[In re Phillips](#), 13 B.R. 82 (Bankr. C.D. Ill. 1981).
- 5 U.S.—[Block v. Hirsh](#), 256 U.S. 135, 41 S. Ct. 458, 65 L. Ed. 865, 16 A.L.R. 165 (1921).
Interest in the use of real or personal property
 Vt.—[In re Green Mountain Power Corp.](#), 192 Vt. 429, 2012 VT 89, 60 A.3d 654 (2012).
Shocking conscience
 To establish a claim for violation of substantive due process in the use and enjoyment of property, plaintiffs must show that their protected property interest was deprived by conduct that was so arbitrary or egregious as to shock the conscience.
 U.S.—[Customers Bank v. Municipality of Norristown](#), 942 F. Supp. 2d 534 (E.D. Pa. 2013), *aff'd*, 563 Fed. Appx. 201 (3d Cir. 2014).
- 6 Me.—[State v. Johnson](#), 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970).
 N.Y.—[Jensen v. City of New York](#), 42 N.Y.2d 1079, 399 N.Y.S.2d 645, 369 N.E.2d 1179 (1977).
- 7 Me.—[State v. Johnson](#), 265 A.2d 711, 46 A.L.R.3d 1414 (Me. 1970).
 N.Y.—[Young v. City of Binghamton](#), 112 Misc. 2d 1017, 447 N.Y.S.2d 1017 (Sup 1982).
Diminutions in property value
 U.S.—[Eisenberg v. City of Miami Beach](#), 1 F. Supp. 3d 1327 (S.D. Fla. 2014).
- 8 U.S.—[Bandini Petroleum Co. v. Superior Court of State of Cal. in and for Los Angeles County](#), 284 U.S. 8, 52 S. Ct. 103, 76 L. Ed. 136, 78 A.L.R. 826 (1931).
- 9 U.S.—[National Solid Wastes Management Ass'n v. City of Dallas](#), 903 F. Supp. 2d 446 (N.D. Tex. 2012).

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16C C.J.S. Constitutional Law § 1906

Corpus Juris Secundum | June 2021 Update

Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

3. What Constitutes Deprivation of Property

§ 1906. Change in rule of law

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3907, 4070

A mere change in a law is not a deprivation of property in violation of the due process protection although a change therein which operates to divest a person of a vested property right may, in some cases, violate the due process guaranty.

A mere change in the law is not an unconstitutional deprivation of property,¹ such as with respect to a change in the form or use of public property.² Thus, where vested rights are not affected, the legislature may change or limit the character of estates and how they may be created, divested, or sold, without violating the due process guaranty.³

On the other hand, due process norms limit the government's ability to extinguish vested rights or entitlements through retroactive legislation.⁴ A legislative act which, by virtue of its retrospective effect, operates to divest a vested right may amount to a taking of property without due process of law,⁵ as where it contingently deprives a person of property, the right to which was perfect under prior laws.⁶ Nevertheless, a statutory change with retroactive application in some cases does not infringe upon due process,⁷ as where the statute destroys or diminishes only contingent interests in property,⁸ or where the public interest in the law outweighs any countervailing property interest,⁹ or where the statute is a valid exercise of some fundamental power,

such as the police power, the taxing power, or the power of eminent domain.¹⁰ Property rights acquired under existing law that cannot be deprived by a change in the law are designated as vested rights, and to be vested, a right must be more than a mere expectation based on an anticipation of the continuance of existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand, or a legal exemption from the demand of another.¹¹

Prospective application.

Of course, there is no due process violation where a statute is applied prospectively as opposed to retrospectively.¹²

Judicial decisions.

Where a court's decision represents a statutory construction of an existing statute in accordance with a previous judicial holding and is not an enlargement of that statute, there can be no deprivation of property in violation of the Due Process Clause.¹³ Similarly, a decision of a state's highest court which only represents a restatement and clarification of well established former laws and not a redefinition of property rights does not violate due process.¹⁴ Further, there is no taking of property where a court, in construing a prior unappealed court decree, reaches a result which arguably conforms to the reasonable expectations of the parties to the prior decree.¹⁵

Moreover, the mere fact that a state court overrules its previous decisions on a question of state law does not infringe upon due process,¹⁶ and a state court reversal of a former decision to the prejudice of one party does not deprive such party of property without due process of law.¹⁷

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Footnotes

- 1 Ky.—*Leiserson & Adler, Inc. v. Keam*, 266 S.W.2d 352 (Ky. 1954).
 Me.—*Opinion of the Justices*, 308 A.2d 253 (Me. 1973).
 Tenn.—*Kittrell v. Kittrell*, 56 Tenn. App. 584, 409 S.W.2d 179 (1966).
Common law
 While rights of property which have been created by common law cannot be taken away without due process, nevertheless, the law itself, as a rule of conduct, may be changed at will or even at the whim of the legislature unless prevented by constitutional limitations.
 Pa.—*Robson v. Penn Hills School Dist.*, 63 Pa. Commw. 250, 437 A.2d 1273, 1 Ed. Law Rep. 872 (1981).
 Pa.—*Conneaut Lake Ice Co. v. Quigley*, 225 Pa. 605, 74 A. 648 (1909).
- 2 La.—*State ex rel. Muslow v. Louisiana Oil Refining Corp.*, 176 So. 686 (La. Ct. App. 2d Cir. 1937), judgment aff'd, 304 U.S. 197, 58 S. Ct. 832, 82 L. Ed. 1287 (1938).
 Md.—*Marburg v. Mercantile Bldg. Co.*, 154 Md. 438, 140 A. 836 (1928).
 N.Y.—*Gedney v. Marlton Realty Co.*, 258 N.Y. 355, 179 N.E. 766 (1932).
- 3 Pa.—*Pennsylvania Federation of Dog Clubs v. Com.*, 105 A.3d 51 (Pa. Commw. Ct. 2014).
- 4 Kan.—*Dester v. Dester*, 50 Kan. App. 2d 914, 335 P.3d 119 (2014).
- 5 Neb.—*Wheelock v. Heath*, 201 Neb. 835, 272 N.W.2d 768 (1978).
 Okla.—*City of Edmond v. Wakefield*, 1975 OK 96, 537 P.2d 1211 (Okla. 1975).
 Wash.—*Hearde v. City of Seattle*, 26 Wash. App. 219, 611 P.2d 1375 (Div. 1 1980).
Emerging issue
 If retroactive construction is placed on a state statute, the issue emerges whether the retroactive statute divests vested property rights in violation of the Due Process Clause of the Fourteenth Amendment.
 U.S.—*Purifoy v. Mercantile-Safe Deposit & Trust Co.*, 398 F. Supp. 1075 (D. Md. 1974), certified question answered on other grounds, 273 Md. 58, 327 A.2d 483 (1974).

- 6 S.C.—*Muldrow v. Caldwell*, 173 S.C. 243, 175 S.E. 501 (1934).
- 7 Ill.—*Kujawinski v. Kujawinski*, 71 Ill. 2d 563, 17 Ill. Dec. 801, 376 N.E.2d 1382 (1978).
- Neb.—*Hiddleston v. Nebraska Jewish Ed. Soc.*, 186 Neb. 786, 186 N.W.2d 904 (1971).
- 8 Ariz.—*Matter of Schock's Estate*, 132 Ariz. 524, 647 P.2d 655 (Ct. App. Div. 2 1982).
- N.C.—*Crumpton v. Mitchell*, 303 N.C. 657, 281 S.E.2d 1 (1981).
- 9 N.J.—*Rothman v. Rothman*, 65 N.J. 219, 320 A.2d 496 (1974).
- N.Y.—*Carner v. Carner*, 85 A.D.2d 589, 444 N.Y.S.2d 715 (2d Dep't 1981).
- Test**
A court tests the due-process constitutionality of the retroactive application of state statutes by asking, first, whether the statute is taking away a "vested right" of the challenger; if the answer is that no vested right is at stake, then the statute satisfies due process and the inquiry ends, but if the challenger is losing a vested right, then the second step of the inquiry asks whether retroactive application has a rational basis, which is discerned by balancing the public interest served by retroactive application against the private interest impacted by the statute.
- U.S.—*Gibson v. American Cyanamid Co.*, 760 F.3d 600 (7th Cir. 2014) (under Wisconsin law).
- 10 N.J.—*Rothman v. Rothman*, 65 N.J. 219, 320 A.2d 496 (1974).
- 11 N.H.—*In re Goodlander*, 161 N.H. 490, 20 A.3d 199 (2011).
- 12 U.S.—*Purifoy v. Mercantile-Safe Deposit & Trust Co.*, 398 F. Supp. 1075 (D. Md. 1974), certified question answered on other grounds, 273 Md. 58, 327 A.2d 483 (1974).
- Minn.—*Matter of Turners Crossroad Development Co.*, 277 N.W.2d 364 (Minn. 1979).
- N.J.—*Rothman v. Rothman*, 65 N.J. 219, 320 A.2d 496 (1974).
- 13 Mo.—*Weeks v. Missouri Pac. R. Co.*, 505 S.W.2d 33 (Mo. 1974).
- 14 Cal.—*County of Los Angeles v. Berk*, 26 Cal. 3d 201, 161 Cal. Rptr. 742, 605 P.2d 381 (1980).
- 15 Haw.—*Application of Sanborn*, 57 Haw. 585, 562 P.2d 771 (1977).
- 16 N.C.—*State ex rel. Summrell v. Carolina-Virginia Racing Ass'n*, 240 N.C. 614, 83 S.E.2d 501 (1954).
- 17 U.S.—*Carolina-Virginia Racing Ass'n v. Cahoon*, 214 F.2d 830 (4th Cir. 1954).

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16C C.J.S. Constitutional Law § 1907

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Constitutional Law

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

3. What Constitutes Deprivation of Property

§ 1907. Deprivation by individuals or corporations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3865, 3867, 3874, 3912, 4070, 4071, 4074, 4085, 4088, 4304

Constitutional guaranties against deprivation of property without due process have no application to a taking by individuals or corporations which is not sought to be justified under legislative or judicial authority.

The constitutional guaranties against the deprivation of property without due process have no application to a taking by individuals or corporations, which is not sought to be justified under legislative¹ or judicial² authority since the constitutional guaranties of due process are directed against the taking of property by, or under the authority of, the state or federal governments.³ The Fourteenth Amendment simply furnishes a guaranty against any encroachment by the State on the fundamental rights which belong to every citizen.⁴ Further, the Fourteenth Amendment is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security.⁵ It forbids the State itself to deprive individuals of life, liberty, or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to ensure that those interests do not come to harm through other means.⁶ It follows that nothing in the Due Process Clause itself requires a state to protect the life and liberty of its citizens against invasion by private citizens, rather, the purpose of the Due Process Clause is to protect people from the State, not to ensure that the State protects them from each other.⁷

Passive state action, such as by a statute which permits self-help in the repossession of property when there is no breach of the peace, is not violative of due process; there must be active and direct state action.⁸ Prejudgment seizure of goods without a prior hearing may be valid⁹ as where a debtor waives the right to a hearing.¹⁰ Thus, a statutory provision giving a secured party the right to repossess collateral after default without judicial process if the repossession can be accomplished without a breach of the peace,¹¹ and a private repossession pursuant to a contract entered into in compliance with such a provision¹² do not constitute a violation of the due process guaranty.

Similarly, it has been held that a default sale of goods sold on a conditional sales contract does not constitute a taking of the conditional vendees' property without procedural due process.¹³ Also, nonjudicial foreclosure under a power of sale contained in a mortgage, not involving participation by the State, does not deprive a mortgagor of his or her property without due process of law¹⁴ and neither does a statute authorizing due-on-sale clauses in savings and loan association mortgages or such a clause in a mortgage granted by such an association.¹⁵

Mesne vendees are not denied due process of law where they are given sufficient notice of the default of their vendees before the vendors declare a contract forfeited and take possession of it but do not act to protect their interests.¹⁶ A coal company's destruction of surface rights owned by plaintiffs incident to the strip mining of minerals owned by the coal company does not deprive plaintiffs of property without due process of law.¹⁷

A statute, however, is void where the effect of its enforcement is to deprive persons of their property without due process of law even though actions for its enforcement are brought by private individuals and not by, or in the name of, the State or any officer thereof.¹⁸

Many acts done by an agency of the State, as, for instance, by a municipal corporation or municipal officers, may be illegal in their character when tested by the laws of the state and may on that ground be assailed, and yet they cannot, for that reason alone, be impeached as being inconsistent with the guaranty of due process of law.¹⁹

The due process guaranty is not violated by the casual use of unused public property for public entertainments to avoid loss of revenue on such property and thereby to lighten the general burden of taxation²⁰ or by the establishment by a municipality of a station for the sale of gasoline and oil, in competition with private persons, even though their property becomes less valuable or their business is rendered unprofitable by reason of such competition.²¹

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Footnotes

- 1 N.Y.—*Watchtower Bible & Tract Soc. v. Metropolitan Life Ins. Co.*, 188 Misc. 978, 69 N.Y.S.2d 385 (Sup 1947), judgment aff'd, 272 A.D. 1039, 75 N.Y.S.2d 81 (1st Dep't 1947), judgment aff'd, 297 N.Y. 339, 79 N.E.2d 433, 3 A.L.R.2d 1423 (1948).
- 2 N.C.—*Charlotte Park and Recreation Commission v. Barringer*, 242 N.C. 311, 88 S.E.2d 114 (1955).
- 3 Wash.—*Allied Sheet Metal Fabricators, Inc. v. Peoples Nat. Bank of Washington*, 10 Wash. App. 530, 518 P.2d 734, 14 U.C.C. Rep. Serv. 432 (Div. 1 1974).
- 4 §§ 1823 to 1838.
- 5 U.S.—*U.S. v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875); *National Federation of Railway Workers v. National Mediation Board*, 110 F.2d 529 (App. D.C. 1940).
- 6 U.S.—*Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992); *Belcher v. Norton*, 497 F.3d 742 (7th Cir. 2007), as amended, (Nov. 19, 2007).

N.Y.—*Price v. New York City Bd. of Educ.*, 51 A.D.3d 277, 855 N.Y.S.2d 530, 231 Ed. Law Rep. 856, 70 A.L.R.6th 683 (1st Dep't 2008).

Tex.—*Leo v. Trevino*, 285 S.W.3d 470, 246 Ed. Law Rep. 475 (Tex. App. Corpus Christi 2006).

U.S.—*Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 112 S. Ct. 1061, 117 L. Ed. 2d 261 (1992); *Morrow v. Balaski*, 719 F.3d 160, 294 Ed. Law Rep. 451, 98 A.L.R.6th 777 (3d Cir. 2013), cert. denied, 134 S. Ct. 824, 187 L. Ed. 2d 686 (2013).

Tex.—*Leo v. Trevino*, 285 S.W.3d 470, 246 Ed. Law Rep. 475 (Tex. App. Corpus Christi 2006).

Colo.—*Henderson v. Gunther*, 931 P.2d 1150 (Colo. 1997).

U.S.—*Greene v. First Nat. Exchange Bank of Virginia*, 348 F. Supp. 672, 11 U.C.C. Rep. Serv. 367 (W.D. Va. 1972).

U.S.—*McCormick v. First Nat. Bank of Miami*, 322 F. Supp. 604, 9 U.C.C. Rep. Serv. 137 (S.D. Fla. 1971).

Removal of parked automobile

Removal of plaintiff's automobile which was parked in defendant shopping center's parking lot in violation of "No Parking" sign was not in violation of Due Process Clause of Fourteenth Amendment to Federal Constitution on theory that it amounted to taking of property without notice or opportunity to be heard.

Ariz.—*Fendler v. Texaco Oil Co.*, 17 Ariz. App. 565, 499 P.2d 179 (Div. 1 1972).

Cal.—*MCA, Inc. v. Universal Diversified Enterprises Corp.*, 27 Cal. App. 3d 170, 103 Cal. Rptr. 522 (2d Dist. 1972).

N.Y.—*Crouse v. First Trust Union Bank*, 86 A.D.2d 978, 448 N.Y.S.2d 329, 33 U.C.C. Rep. Serv. 1170 (4th Dep't 1982).

Wash.—*Mount Vernon Dodge, Inc. v. Seattle-First Nat. Bank*, 18 Wash. App. 569, 570 P.2d 702, 23 U.C.C. Rep. Serv. 247 (Div. 1 1977).

Conn.—*A & S Excavating, Inc. v. International Harvester Credit Corp.*, 31 Conn. Supp. 152, 325 A.2d 535, 15 U.C.C. Rep. Serv. 759 (Super. Ct. 1974).

Del.—*Giglio v. Bank of Delaware*, 307 A.2d 816, 12 U.C.C. Rep. Serv. 934 (Del. Ch. 1973).

Or.—*Brown v. U. S. Nat. Bank of Oregon*, 265 Or. 234, 509 P.2d 442, 12 U.C.C. Rep. Serv. 549 (1973).

U.S.—*Brunswick Corp. v. J & P, Inc.*, 424 F.2d 100, 7 U.C.C. Rep. Serv. 643 (10th Cir. 1970).

U.S.—*Bryant v. Jefferson Federal Sav. and Loan Ass'n*, 509 F.2d 511 (D.C. Cir. 1974); *Y Aleman Corp. v. Chase Manhattan Bank*, 414 F. Supp. 93 (D. Guam 1975).

La.—*Louisiana Sav. Ass'n v. Trahan*, 415 So. 2d 592 (La. Ct. App. 3d Cir. 1982), writ denied, 420 So. 2d 445 (La. 1982).

Wash.—*Brummett v. Sando*, 2 Wash. App. 33, 466 P.2d 187 (Div. 1 1970).

U.S.—*Watson v. Kenlick Coal Co.*, 365 F. Supp. 456 (E.D. Ky. 1973), judgment aff'd, 498 F.2d 1183 (6th Cir. 1974).

U.S.—*Central of Georgia Ry. Co. v. Railroad Commission of Alabama*, 161 F. 925 (C.C.M.D. Ala. 1908), rev'd on other grounds, 170 F. 225 (C.C.A. 5th Cir. 1909).

Abandoned motor vehicles

Due process did not permit procedure in act which required notice prior to sale of abandoned automobile, but made no provision for judicial hearing as matter of right on issues in controversy either prior to or following sale of vehicle; thus, act was unconstitutional and void under constitution.

Ga.—*Gore v. Davis*, 243 Ga. 634, 256 S.E.2d 329 (1979).

U.S.—*Owensboro Waterworks Co. v. City of Owensboro*, 200 U.S. 38, 26 S. Ct. 249, 50 L. Ed. 361 (1906).

Mont.—*Farmers' State Bank of Conrad v. City of Conrad*, 100 Mont. 415, 47 P.2d 853 (1935).

Md.—*Gottlieb-Knabe & Co. of Baltimore City v. Macklin*, 109 Md. 429, 71 A. 949 (1909).

U.S.—*Mutual Oil Co. v. Zehrung*, 11 F.2d 887 (D. Neb. 1925).

16C C.J.S. Constitutional Law § 1908

Corpus Juris Secundum | June 2021 Update

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PART VIII. Due Process in General; Procedural and Substantive Due Process; Access to Courts

XX. Deprivation of Life, Liberty, or Property

C. Property

3. What Constitutes Deprivation of Property

§ 1908. Impairment of grant or franchise

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  3874(1), 3902, 4070, 4365, 4371, 4372

It is a violation of the due process guaranty for a legislative body to control or destroy property rights which have legally vested under grants or franchises unless power for that purpose has been duly reserved.

It is a violation of the constitutional inhibition against the taking or deprivation of property without due process of law for a legislative body to control or destroy, by subsequent legislative action, property rights which have legally vested under grants or franchises¹ unless power for that purpose has been duly reserved.²

In the absence of such reserved power, a municipal ordinance is invalid as a denial of due process of law which attempts to deprive a public service company of the use of the streets which has been granted to it by the terms of its franchise³ or which adversely changes the terms under which the grantee or franchise holder is entitled to operate.⁴

So, also, an ordinance is invalid which annexes to the municipality a long strip of territory merely for the purpose of including a toll road and depriving the company of the right to tolls.⁵ On the other hand, an ordinance may require that a utility remove its facilities at its expense without denying due process.⁶

If a reservation of power to alter or repeal a grant or franchise is conditional, after the happening of the condition the power is as broad as if the reservation had been unconditional in the first place.⁷

A ferry franchise on a navigable stream is held subject to the power of the federal government to alter the stream for proper purposes, even though such alteration involves destruction of the ferry franchise, and no compensation is required to be paid.⁸

If a franchise is not exclusive, a subsequent grant to others of a similar franchise does not unconstitutionally impair the first franchise.⁹ Similarly, an ordinance authorizing a public utility to use easements granted to other utilities does not authorize an unconstitutional taking without due process.¹⁰ A municipality may compete with a public service company which has been granted a franchise unless precluded by a plain contract provision.¹¹

Police regulations.

A grant or franchise is not impaired in violation of the due process guaranty by the making of needful police regulations,¹² such as by a regulation in the interest of the public health, safety, and general welfare.¹³

Partner of grantee.

A private not-for-profit partner of a local governmental entity, which jointly operates a federally funded facility with such entity, does not have a due process protected property interest in the federal grant where the local governmental entity is the sole grantee, any entitlement arising from the partner's agreement with the local governmental entity is provided by the entity under the agreement, and the partner does not have an ascertainable term of employment with the federal government or with entity pursuant to the grant.¹⁴

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Footnotes

- 1 U.S.—*Greenwood v. Union Freight R. Co.*, 105 U.S. 13, 26 L. Ed. 961, 1881 WL 19781 (1881).
N.J.—*Board of Recreation Com'rs of Borough of Rutherford v. Borough of Rutherford*, 166 N.J. Super. 476, 400 A.2d 95 (App. Div. 1979).
Franchises as property interests for procedural due process purposes
U.S.—*Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215 (5th Cir. 2012).
- 2 U.S.—*Kirk v. Providence Mill Co.*, 279 U.S. 807, 49 S. Ct. 511, 73 L. Ed. 969 (1929); *Kirk v. Maumee Val. Elec. Co.*, 279 U.S. 797, 49 S. Ct. 507, 73 L. Ed. 963 (1929).
Condition on right to maintain dam
Provisions of an act under which a riparian owner holding a state license might be compelled on expiration of a federal license for construction of a hydroelectric dam to sell his project and his riparian rights to the United States at less than fair value, did not violate the due process clause of the Fifth Amendment since submission to such acquisition by United States was the price the riparian owner was required to pay to obtain the right to maintain the dam which the United States could prohibit altogether.
U.S.—*U.S. v. Appalachian Elec. Power Co.*, 311 U.S. 377, 61 S. Ct. 291, 85 L. Ed. 243 (1940).
- 3 U.S.—*City of Dayton, Ohio, v. City R. Co.*, 16 F.2d 401 (C.C.A. 6th Cir. 1926).
N.Y.—*City of New Rochelle v. Westchester Elec. R. Co.*, 176 Misc. 1044, 29 N.Y.S.2d 805 (Sup 1940), *aff'd*, 262 A.D. 874, 29 N.Y.S.2d 719 (2d Dep't 1941), *aff'd*, 288 N.Y. 571, 42 N.E.2d 23 (1942).
- 4 U.S.—*Chicago City Ry. Co. v. City of Chicago*, 142 F. 844 (C.C.N.D. Ill. 1905).
Increased license fees

A city ordinance, amending a city's consents to a street railroad corporation's operation of buses instead of street cars on city streets by increasing a bus license fees fixed by a previous ordinance, was unconstitutional as depriving such corporation of its property without due process of law.

N.Y.—*Tilton v. City of Utica*, 60 N.Y.S.2d 249 (Sup 1946).

Ill.—*City of Belleville v. St. Clair County Turnpike Co.*, 234 Ill. 428, 84 N.E. 1049 (1908).

Mo.—*Union Elec. Co. v. Land Clearance For Redevelopment Authority of City of St. Louis*, 555 S.W.2d 29 (Mo. 1977).

Mass.—*Boston Elevated Ry. Co. v. Com.*, 310 Mass. 528, 39 N.E.2d 87 (1942).

U.S.—*U.S. ex rel. and for Use of Tennessee Valley Authority v. Birmingham Ferry Co.*, 79 F. Supp. 569 (W.D. Ky. 1948).

As to ferry franchise as property right within protection of due process guaranty, see § 1897.

U.S.—*City of Walla Walla v. Walla Walla Water Co.*, 172 U.S. 1, 19 S. Ct. 77, 43 L. Ed. 341 (1898).

Ill.—*Midwest Television, Inc. v. Champaign-Urbana Communications, Inc.*, 37 Ill. App. 3d 926, 347 N.E.2d 34 (4th Dist. 1976).

U.S.—*Durham v. State of N.C.*, 395 F.2d 58 (4th Cir. 1968).

N.C.—*Elizabeth City Water & Power Co. v. Elizabeth City*, 188 N.C. 278, 124 S.E. 611 (1924).

Service in annexed area

U.S.—*Dixie Elec. Membership Corp. v. City of Baton Rouge*, 440 F.2d 819 (5th Cir. 1971).

Mo.—*Missouri Cities Water Co. v. City of St. Peters*, 534 S.W.2d 38 (Mo. 1976).

Ambulance service

U.S.—*Gentry v. Howard*, 365 F. Supp. 567 (W.D. La. 1973).

Rural transportation grant

A federal, state, and county award of a rural transportation grant under an act to a county board of human services did not constitute unfair competition depriving a private taxi company of business which constituted an unjust taking of its property without just compensation in violation of the Fifth Amendment nor did it constitute a direct taking of its property in violation of due process.

U.S.—*Associated Businesses of Franklin, Inc. v. Warren County Bd. of County Com'rs*, 522 F. Supp. 1015 (S.D. Ohio 1981).

U.S.—*Boston Beer Co. v. State of Massachusetts*, 97 U.S. 25, 24 L. Ed. 989, 1877 WL 18647 (1877).

Mo.—*State ex inf. Hadley v. Standard Oil Co.*, 218 Mo. 1, 116 S.W. 902 (1908), *aff'd*, 224 U.S. 270, 32 S. Ct. 406, 56 L. Ed. 760 (1912).

U.S.—*Laurel Hill Cemetery v. City and County of San Francisco*, 216 U.S. 358, 30 S. Ct. 301, 54 L. Ed. 515 (1910); *Berea College v. Commonwealth of Kentucky*, 211 U.S. 45, 29 S. Ct. 33, 53 L. Ed. 81 (1908).

Trash and garbage removal

An ordinance authorizing a city to engage in trash and garbage removal services to houses, mobile homes and apartment buildings containing five units or less did not deprive the operators of a licensed private trash collection service of property without due process.

Colo.—*U. S. Disposal Systems, Inc. v. City of Northglenn*, 193 Colo. 277, 567 P.2d 365 (1977).

U.S.—*Citizens Health Corp. v. Sebelius*, 725 F.3d 687 (7th Cir. 2013).

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